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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$ 100,000 (CATEGORY "C" CLAIMS)

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* See document S/AC.26/1996/R.3/Add.1/Rev.1 (in English only) for Annexes I and II. Distribution of Annex III is restricted to each respective submitting Government or international organization due to confidentiality.

INTRODUCTION

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$ 100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure 1/ (the "Rules"). These recommendations concern the second instalment comprising 62,337 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel has reviewed the second instalment of category "C" claims in a continuum with the Panel's processing of the first instalment of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$ 100,000 (Category 'C' Claims)"2/ (the "First Report"). The present report builds upon the considerations, descriptions, precedents and determinations expressed in the First Report, and incorporates these by reference.3/

3. This report reflects the work performed by the Panel since it issued its recommendations on the first instalment of category "C" claims. Since the First Report, the Panel has held four sessions with the Commission's secretariat, all of which were conducted in private at the secretariat's headquarters in Geneva. These sessions took place from 20 through 22 November 1995; 1 through 2 and 26 through 27 February, and 28 through 30 March 1996. Also present at the sessions were experts whose advice was requested by the Panel in accordance with article 36 (b) of the Rules.4/ Communications between the Panel and the secretariat continued between sessions.5/ The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the second instalment.

4. In addition to the Introduction, this report contains five sections and three annexes. Section I recapitulates the Panel's mandate. Section II describes the expedited processing approach developed on the basis of the Panel's mandate and summarizes, in general terms, the work performed to give effect to this approach. Section III describes the various activities undertaken by the Panel and the secretariat in the organization and preparation of claims for database-assisted processing. Based on the substantive determinations made by the Panel for the first instalment of category "C" claims, section IV addresses the validation and application of these determinations in this second instalment of claims. Section V summarizes the Panel's recommendations.

5. Annex I contains the expert opinion of the statistical consultants on the statistical modelling approach adopted by the Panel as a means to

resolve several of the loss types contained in the category "C" claims. At the request of the Panel, the secretariat, in collaboration with these experts, has prepared a more detailed technical description of the modelling process. This description is also included in annex I. Annex II contains the recommended compensation amounts for claims included in the second instalment of category "C" claims for each submitting Government and international organization. Annex III contains a breakdown of these recommended amounts by individual claimant.

I. GENERAL FRAMEWORK

6. At the outset, the Panel recalls the framework within which it operates. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council Decisions, the Rules, and other relevant principles and practices of international law. The Panel has also taken into account the following: information accompanying the submission of the second instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; further communications by submitting Governments and international organizations providing background information related to their claims; and relevant United Nations and other reports.

7. In terms of defining the Panel's mandate, the Governing Council's Decision 1 has particular relevance.6/ In this Decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, Decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted."7/ Consistent with this Decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims of smaller amounts.

II. PROCESSING APPROACH AND SCOPE OF WORK

8. In view of the large number of category "C" claims submitted to the Commission, the provisions of Decision 1 have had a significant bearing on the development of a claims processing system. The Commission has received approximately 430,000 category "C" claims.8/ As explained in the First Report, one category "C" claim may constitute the aggregate of more than

twenty different types of damages (e.g., various categories of mental pain and anguish, medical expenses, support losses, personal property losses, loss of motor vehicles, employment-related losses, real estate damages, business losses, etc.). Each of these highly diverse loss types requires the application of a separate processing method.9/ Based on an estimated average of three loss types per claim, the resolution of some 430,000 claims involves the processing of up to 1.3 million separate loss elements.

9. The Panel was mindful of these parameters when it made its recommendations on the first instalment of category "C" claims. As seen in the First Report, where appropriate, the Panel implemented methods, criteria, and techniques that could expedite the processing of thousands of category "C" claims in subsequent claims instalments. Viewed as a "sample" of other similarly-situated claims, the claims in the first instalment were reviewed to formulate general criteria and conclusions, whether related to issues of causation, evidence, valuation or otherwise. By implementing statistical sampling and modelling techniques, the Panel aimed to adopt a balanced approach that would render practical and simple justice.10/

10. The Panel also recognized the limitations of devising a mass claims-processing system based solely on the review of the 2,873 claims included in the first instalment. The claims in the first instalment were the first category "C" claims filed with the Commission, and therefore did not include the submissions of all concerned Governments and international organizations. The first instalment of claims also did not reflect the full experience developed by Governments and international organizations in preparing their claims. Furthermore, the claims were not sufficient in number to raise all generally applicable issues for each loss element. Noting that the criteria resulting from the Panel's disposition of the first instalment of claims should not in all respects be considered as necessarily final, the Panel acknowledged in the First Report that further development of the processing methods and criteria would be required for the resolution of future claims instalments.11/

11. The activities undertaken by the Panel and the secretariat since the first instalment of category "C" claims reflect the considerations expressed in paragraphs 8, 9, and 10, supra. The secretariat has focused on building a claims-processing system to apply the Panel's precedental determinations. Section III, infra, explains the main components of this comprehensive processing system: the registration and organization of claims; the entry of claims data into a database; the checking of claims data; the application of processing criteria; and the reporting of awards. As described in section IV, infra, the Panel has also further reviewed its substantive processing criteria. With the development of the claims database, additional information about the category "C" claims population as a whole has now become available. This has allowed the Panel to

reconfirm and, where appropriate, refine its evidentiary determinations and valuation methods. Using standard statistical methods against the background of relevant precedents, the Panel has conducted sampling projects that investigate evidence across all claims, and has performed computer database analyses that enable the validation of the various processing methods. Statistical expertise and specialized computer facilities have enhanced the modelling approach adopted by the Panel.

12. As noted in paragraph 8, supra, the diversity of loss elements within each category "C" claim has necessitated the development of different processing methodologies for each type of loss. For the loss elements most frequently claimed, database applications and statistical sampling and modelling techniques have been designed. However, as acknowledged in the First Report, certain losses under category "C" require additional claim-by-claim attention.12/ Examples of such losses are those relating to personal injury or death, claims posing jurisdictional problems, and claims presenting multiple claim issues. Although the Panel is aware of the need to resolve these more problematic claims in an expeditious fashion, in light of its mandate, the Panel has determined that those loss types that lend themselves easily to expedited measures will be addressed first. This "fast-track" approach forms the basis for the size and composition of the second instalment of category "C" claims.

13. The second instalment is composed of claims that contain only those loss elements that could be processed efficiently through database-assisted techniques and did not otherwise present any special problems. The claims resolved on this basis represent the losses most frequently suffered by category "C" claimants, principally: losses claimed on the "C1" page of the claim form for transportation, food, lodging, relocation and other related losses ("C1-Money" claims); losses claimed on the "C4" page for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" claims); losses claimed on the "C4" page for the loss or theft of motor vehicles ("C4-MV" claims); losses claimed on the "C5" page related to bank accounts located in Kuwait; and wages and salary losses claimed on the "C6" page of the claim form ("C6-Salary" claims).13/ Representing the aggregate result of the Panel's processing of these fast-track loss elements, the amounts recommended for compensation in the second instalment therefore resolve all losses contained in these claims. It is expected that a number of subsequent instalments of category "C" claims will also be based on this fast-track approach, and will therefore include additional claims composed of these same loss elements.

14. Also covered by the fast-track approach are certain additional loss types that, for sections of the category "C" claims population, are capable of being sampled or otherwise decided at this stage. These include the following: claims submitted by nationals of Organization for Economic Cooperation and Development (OECD) countries and Kuwait on page "C1" of the

claim form for mental pain and anguish ("C1-MPA" claims) related to forced hiding; and C1-MPA claims submitted by nationals of OECD countries related to hostage taking or illegal detention for more than three days.

III. ORGANIZATION AND PREPARATION OF CLAIMS

15. Much of the work since the first instalment of category "C" claims has concentrated on developing the claims processing system in order to give mass effect to the Panel's determinations and criteria. This section provides a summary of these activities.

16. As explained in the First Report, the Commission made a fundamental choice when it determined that computerized support would be necessary to process category "C" claims.14/ Essential processing functions that depend on the computerized organization of claims include the registration, tracking and grouping of claims, claims analysis, development of processing criteria, statistical modelling, selection of samples, extrapolation of sampling results, duplicate and cross-category claims checking, and the calculation and reporting of compensation. Working with its information systems staff, the secretariat has been able to develop further the database processing system.15/

17. Given the large volume of category "C" claims filed by the Governments of Kuwait and Egypt (approximately 166,000 and 92,500 claims, respectively), the secretariat provided claim numbers and data entry software to these Governments to allow the submission of their category "C" claims, not only on paper, but also in electronic format. After the secretariat had loaded the electronic claims data received from Egypt and Kuwait into the database, the secretariat's organizational tasks were primarily concerned with the approximately 165,000 remaining claims submitted to the Commission. These claims and their attachments entailed the organization of some 7 million pages of paper, submitted by more than 70 Governments and international organizations.

18. As a first step towards the entry of these claims into the database, paralegal staff at the secretariat registered the claims electronically and labelled the claim forms and claim boxes with pertinent identifying information. In addition, the secretariat performed various preliminary reviews and checks of the claims, such as verifying claim copies with originals. The secretariat retained the original claim forms and forwarded the copies to a professional data entry firm for entry into electronic format.16/ The order in which the claims were processed took into account a number of considerations: the need to ensure that claims from all submitting Governments and international organizations were included in the initial stage of data entry; the need for this initial group of claims to be representative of the category "C" claims population as a whole; the

relative size of the submissions made by Governments and international organizations; the organizational complexity of groups of claims; and the order in which consolidated claims were registered.

19. Given the complex and diverse nature of the losses suffered, and the difficulties many claimants had in expressing their losses through the claim form, the data entry process has posed a major challenge. Indeed, as the Panel pointed out in the First Report, many claims were filed with the Commission in an unorganized or incomplete state. Analysis of the claims has revealed distinct differences in presentation.17/ While many claims have been carefully prepared, numerous others were based on erroneous interpretations of the "C" claims category as a whole, and the category "C" claim form in particular.18/ In view of the consequences that this has had in terms of both the secretariat's organization of the claims, and the Panel's claims-processing approach, the Panel finds it necessary to elaborate on this point.

20. The difficulties associated with the category "C" claims received by the Commission are far-reaching and varied. The following list identifies many of the complications and issues raised by a large number of claims: duplicate claim forms filed by the same claimant; multiple claims filed on behalf of or with other individuals; claims that were later supplemented or substituted in whole or in part; formal deficiencies under the Rules; identical or similar losses claimed in other claims categories; misunderstanding of jurisdictionally relevant dates; incorrect calculations; unclear currencies; different numbering conventions; the use of wrong claim form pages; overlapping or double-claimed losses within a claim; implied or express inclusion of individual amounts for lump sum categories of mental pain and anguish; discrepancies between originals and copies of claim forms; contradictions between two completed sides of the pages of the form; questions of translation; claims exceeding US$ 100,000; lack of family-related information; inadvertent switches of evidentiary attachments between claims; ambiguity as to a claimant's identity; illegible information; claim forms in a tattered condition; ambiguous modifications to the completed claim forms; inconsistencies between specific amounts and totals; and the partial completion of the claim form. For every problem that appears to affect large groups of claims, thousands of individual claims present unique complications.

21. These difficulties have had a number of consequences on the practical application of a mass claims-processing system. Because relevant information is absent or not clearly provided, or simply because the volume of claims corresponding to a particular type of loss does not permit individual examination, detailed distinctions regarding legal and factual issues are not always possible.19/ Given that a manual review of 430,000 highly diverse claims is not a realistic option, the Panel's processing criteria and recommendations take account of similarly-situated sections of

the claims population as a whole. This is in keeping with Decision 1 and relevant precedents. As further explained in section IV, infra, by compiling and comparing information about groups of claims, statistical sampling and modelling methods provide results that are efficient and, based on presumptions of normalcy and on the reduction of individual bias, reasonable.20/

22. Although claims are resolved using such mass-processing techniques, as much as possible the data entry and data management process takes into account the difficulties associated with individual claims, such as those enumerated in paragraph 20, supra. Tailored to the Panel's processing criteria, and building upon similar efforts made with respect to the first instalment,21/ a set of procedures has been designed to facilitate the complete and consistent capture of claims data. In addition to the preliminary checks referred to in paragraph 18, supra, the preparation of category "C" claims involves the following processes: the application of specially developed data input rules and guidelines; the ongoing resolution of issues detected during the claims scrutiny and entry process; the special coding of particular claims not so resolved; the application of an input validation program; the database-assisted identification and verification of claims presenting specific problems; statistically supported input quality control;22/ and the separation of certain problematic claims for further review.

23. The processes described in this section have resulted in the creation of a database of considerable size and scope that stores category "C" claims data in a systematic and organized format. To facilitate the use of this information, the secretariat has developed a variety of software applications including on-screen access to claims, the selection of claims based on grouping criteria, the generation of relevant statistics, the tracking and management of the claims' processing status, the calculation of compensation amounts, and the automated reporting of awards. The claims included in the second instalment of category "C" claims are the first group of claims to have passed through all stages of this claims-processing system.

IV. PROCESSING METHODOLOGIES AND RESULTS

24. As noted in section II, supra, the data which have become available with respect to the category "C" claims population as a whole have enabled the Panel to reconfirm and, where appropriate, refine its evidentiary determinations and valuation methods.23/ Having validated and finalized its processing criteria through statistical analysis, the Panel has applied these methodologies to the second instalment of claims. This section IV describes the processing methodologies used for the loss elements included in the Panel's fast-track processing approach.

A. Statistical sampling methodologies: C1-MPA claims

25. As noted in paragraph 7, supra, the Governing Council has provided for the use of statistical sampling to resolve claims in the urgent categories. The Panel has made sampling techniques an integral component of its processing system. The First Report describes the Panel's use of sampling in the context of the first instalment of category "C" claims.24/ The First Report also mentions the precedental use of sampling in courts, tribunals and commissions in an international and a national context.25/

26. The basic goal of a sampling exercise is to examine a section of a population, i.e., a sample, in order to draw conclusions about the entire population as accurately as possible.26/ A principal factor in designing a sample therefore, is to maximize the likelihood that, with respect to the characteristics being considered, the sample selected is representative of the non-sampled population. While exact representativeness is seldom the case, with a properly designed sample it is possible to obtain a reliable estimate of the proportion of the population that holds the characteristics under consideration.

27. A sample that is randomly selected and relatively large is more likely to be representative. At the same time, the sample should not be so large as to undermine the very purpose for which the sampling exercise is being conducted: time savings and cost effectiveness. Based on the available time and resources, the sample size is a function of several inter-related factors. These factors include the size of the population from which the sample is selected, the amount of information known about the population being sampled, the homogeneity or heterogeneity of the population, and the degree of precision (i.e., margin of error)27/ and level of confidence28/ desired.

28. After reviewing the available data and the various sampling methodologies, the Panel decided to employ a simple random sampling methodology consisting of a number of inter-related stages. In the first stage, a sufficient number of sample claims are randomly selected. Applying the factors enumerated in paragraph 27, supra, the secretariat's statisticians thereby take into consideration the results obtained from the application of the Panel's criteria to the claims in the first instalment or to pilot samples, and information provided by submitting Governments and international organizations about their claims. After the sample is selected, the secretariat reviews the claims pursuant to the Panel's processing criteria. The results of this review are captured on worksheets and in electronic format. Once analyzed by the statisticians, and extrapolated to the population of claims from which the sample is drawn, the results are then considered by the Panel.

29. The advice of mass claims-processing experts and statisticians has ensured that the sampling procedures adopted by the Panel are the most appropriate for the processing of category "C" claims, pursuant to standard statistical practices. As further described in paragraphs 30 through 32, infra, the Panel has relied on sampling techniques to process groups of C1-MPA claims in the second instalment of category "C" claims. The Panel expects to use the same techniques to process additional groups of C1-MPA claims, and other loss types, in future category "C" instalments.

30. Three considerations led to the Panel's selection of groups of C1-MPA claims for the second instalment. First, because homogeneity of the population allows the sample size to be manageable, the sampling projects covered groups of claims expected to share evidentiary and other relevant characteristics. Second, and related to the foregoing, the Panel also took into consideration the ease with which the criteria adopted in the first instalment could be applied in the context of a sampling methodology. Third, the Panel was guided by the overall number of C1-MPA claims by submitting entity.

31. Based on the above considerations, the sampling population included a large number of claims filed by the Government of Kuwait that contained the C1-MPA loss element of forced hiding.29/ Ensuring that the second instalment comprised a sufficient number of claims representing all submitting Governments and international organizations, claims by nationals of OECD countries were also included in the sampling population. Known to have been specifically targeted for hostage taking, many of these individuals have submitted claims for hostage taking or illegal detention for more than three days, or for forced hiding.30/ The composition of the population thus led to the definition of two separate samples: one for claims filed by Kuwaiti nationals, and a second for claims by nationals of OECD countries.

32. The basic sampling objective for these C1-MPA loss elements was to determine how many claimants, on the basis of the sample claims reviewed, could be deemed to have satisfied the applicable C1-MPA criteria established in the First Report.31/ The sample claims were also reviewed to assess the reliability of the number of days claimed on the claim form for purposes of determining the recommended amounts. Based on the sampling results,32/ which confirm the Panel's original findings with respect to C1-MPA claims in the first instalment, the Panel concludes that Kuwaiti nationals with claims for forced hiding, and nationals of OECD countries with claims for forced hiding or for hostage taking or illegal detention for more than three days, should be compensated for their respective C1-MPA losses. The Panel further finds that such compensation is to be based on the number of days stated on the claim form, to be calculated by application of the formulas set out by Decision 8 of the Governing Council.33/

B. Statistical modelling methodologies: C1-Money and C4-CPHO claims

33. The considerations that led the Panel to adopt supplementary methods of assessing the value of claimants' losses in the first instalment continue to be valid. For loss types such as C1-Money and C4-CPHO, the claims by themselves do not provide a sufficiently clear or consistent valuation basis.34/ Even if the quality of presentation were such that claims could be valued individually on the basis of their supporting documentation, the vast number and immense diversity of the category "C" claims do not permit such an approach. The Panel recalls, for example, that for "C4" personal property losses, approximately 250,000 claims have been filed.35/

34. As mentioned in the First Report, where lack of time and paucity of information inhibit a more individualized processing approach, statistical tools such as regression analysis provide a means for taking into account individual characteristics relevant to the determination of compensation awards. Statistical methods also introduce a level of objectivity and consistency into the determinative process of resolving thousands of claims presenting a myriad of valuation and other issues.36/

35. A statistical regression model allows for the comparison of an amount claimed by any one claimant to the amounts claimed by all other claimants. Such comparisons take account of each claimant's personal and other characteristics that condition the amount claimed. Thus, the model generates an objective standard for each claimant reflecting individual qualities that are likely, on average, to have made the claimant more or less prone to have suffered the losses alleged. The claimant may then be awarded the lower of the amount generated by this process or the amount claimed. The Panel considers compensation determined on this basis to be reasonable because it reflects the patterns in the amounts claimed by all claimants in the population. Also, within the framework of mass claims-processing, the compensation reflects, as much as possible, the individual circumstances and characteristics of the claimant.37/

36. The Panel made effective use of statistical modelling to process the first instalment of category "C" claims. The Panel has used the additional statistical information to validate and further develop its modelling approach. As noted, in adopting modelling as a processing method the Panel has relied on the expertise of statistical consultants. The Panel refers to their expert opinion with respect to the results of the modelling process, and to the secretariat's technical description of this process, both contained in annex I. The following two paragraphs summarize the modelling approach.38/

37. The first phase of the modelling process requires the building of a properly specified model. The largest possible representative sample of

available claims is used to determine the parameters of the model, i.e., the weightings to be given to each of the variables included in the analysis, taken from the claim form and other relevant data.39/ The effects of the various parameters, i.e., how the parameters function in the model to explain the amount claimed, are then interpreted to determine the optimum effects leading to the best approximation of the amount claimed. Various statistical tests and calculations are performed to assess the global quality of the model in terms of this approximation. Once the model satisfies statistically and theoretically sound criteria, the relevant parameters are retained for use in the second phase: the model application.

38. In the second phase of the modelling process, the model — a set of variables and corresponding parameters that form the regression equation — is applied to the claims included in a particular instalment. These can include claims used in the model building phase, as well as claims not used for this purpose. Regardless of the claims to which the model is applied, because the model parameters have been determined using a representative sample, all claims are treated alike on the basis of a common mathematical formula.

39. Using these procedures, the Panel has further developed the statistical model for C4-CPHO claims.40/ In addition, relying on the available data-set, the Panel was also able to apply the same approach to C1-Money claims.41/ As in the first instalment, to validate its valuation approach the Panel verified, on a sample basis, the evidence submitted in support of C1-Money and C4-CPHO claims. In addition to confirming the immense diversity of the items claimed, the sampling results revealed patterns of evidence similar to those previously observed: approximately 93 per cent of C1-Money claimants and 90 per cent of C4-CPHO claimants submitted some form of evidence in support of their claim in addition to the claim form. In light of this evidence, the Panel concludes that claims for C1-Money and C4-CPHO should be compensated at the lower of the amount claimed or the amount generated by the modelling process described in the preceding paragraphs.

C. Other methodologies

1. C4-MV claims

40. The First Report describes the Panel's processing considerations for C4-MV claims and the substantive criteria to verify and compensate such claims.42/ Taking into consideration the information available on the circumstances surrounding motor vehicle losses, the Panel has applied a rebuttable presumption as to the fact of a claimant's loss and its causal relationship to the Iraqi invasion and occupation of Kuwait.43/ Furthermore, non-Kuwaiti claimants are considered to have established ownership of the motor vehicle claimed if they have provided the make or

model of the motor vehicle, the registration or vehicle identification number, and the original cost or value thereof.

41. For those claims in the second instalment that satisfied these ownership criteria, 44/ the Panel determined the recommended amount of compensation by selecting the lowest of three amounts: the amount of loss claimed for the motor vehicle on the "C4" page of the claim form; the Motor Vehicle Valuation Table ("MVV Table") value corresponding to a claimant's motor vehicle;45/ and the original cost or value of the vehicle as stated on the "C4" page of the claim form.46/

2. "C5" claims related to bank accounts in Kuwait

42. The Panel refers to the processing considerations set out in the First Report with respect to claims stated on the "C5" page of the claim form for losses related to bank accounts located in Kuwait.47/ The Central Bank of Kuwait has established procedures to provide claimants access to amounts on deposit with Kuwaiti banks. By availing themselves of these procedures, claimants indeed appear to have been able to recover their deposits. The Panel recognizes that the procedures established by the Central Bank of Kuwait are intended to apply to all deposits with banks in Kuwait. The Panel therefore reaffirms its conclusion made in the First Report that claims for such deposits, including those in the second instalment of category "C" claims, are not compensable.

43. As it did with respect to the first instalment of "C5" claims for bank accounts in Kuwait, in order to facilitate any follow-up that may be necessary with respect to bank deposits in Kuwait, the Panel directs the secretariat to provide each submitting Government and international organization with a list of its claimants having a claim for "C5" Kuwait bank account losses in the second instalment. The Panel also directs the secretariat to forward the same information, through the Government of Kuwait, to the Central Bank of Kuwait.

3. C6-Salary claims48/

44. The First Report details the Panel's valuation methodology for C6-Salary claims.49/ In the First Report, the Panel found that a claimant's pre-invasion income reflected a wide variety of employment-related factors. These factors include: the remaining portion of a fixed-term contract, unpaid remuneration, allowances and benefits, holiday pay, end-of-year and other bonuses, payment in lieu of notice of termination of employment, severance pay, and end-of-service indemnities. Bearing in mind that a manual review of each income loss claim is not a viable option, the Panel found that the pre-invasion monthly income, as stated by the claimants, should be the point of departure for determining compensation. The Panel

also noted that such compensation would have to take into account claimants' mitigation of their losses.

45. The resulting valuation methodology established for C6-Salary claims is based on the application of a multiplier of seven to a claimant's asserted pre-invasion monthly income. Recognizing that some claimants had more difficulty than others in preparing their claims, the Panel "capped" the compensation for claimants with higher incomes. These claimants were awarded the lesser of the amount resulting from the application of the multiplier of seven, and the amount of a claimant's total C6-Salary claim.50/ Aware, however, that a large number of wages and salary claims were filed in category "C", the Panel noted in the First Report that it would review the methodology thus developed for C6-Salary claims in light of the evidentiary and other characteristics of future instalments of such claims.51/

46. Accordingly, the Panel has conducted an extensive analysis to ascertain the level of evidence in support of C6-Salary claims, to assess the appropriateness of the seven multiplier, and to determine whether modification of the compensation cap level was warranted. Based on the analysis of a statistical data-set composed of 60,374 C6-Salary claims representing all submitting Governments and international organizations, the Panel was able to draw conclusions about the entire population of wages and salary claims.

47. The sample revealed the following profile of C6-Salary claimants and their asserted losses. Consistent with official reports, approximately 60 per cent of the claimants in the data-set were found to have had a monthly income below US$ 750, the amount representing the established low income cut-off for employees in Kuwait.52/ Most claimants in this group are from countries recognized as the principal sources of low income labour in Kuwait and Iraq. Approximately 40 per cent of the claimants in the data-set were found to have had a monthly income in the middle income range of US$ 750 to US$ 3,000 (for employees in Iraq) or US$ 3,500 (for employees in Kuwait). Less than one per cent of the claimants in the data-set had an income in the high income range.

48. The level and patterns of evidence submitted in support of C6-Salary claims are similar to those observed in the first instalment of claims. Over 92 per cent of claimants in the data-set submitted some form of evidence in support of their claims in addition to the claim form.53/ The quality of the evidence appears to be related to the level of income: the higher the claimant's income, in general, the better the evidence. At the same time, while many claimants in the low income group appear to have had considerable difficulty in expressing their income losses, a significant number of these claimants have also submitted evidence of probative value.

49. To evaluate the effect of the C6-Salary compensation multiplier, the Panel analyzed the income losses claimed in the sample in relation to the claimants' monthly income. This also provided a frame of reference for comparing claimants from different countries and with different income levels. The Panel's analysis shows that the aggregate compensation effect of the multiplier formula is to reduce the total amount claimed for income losses by approximately 47 per cent, prior to the application of the monthly income-based cap. The sampling results suggest that the Panel's valuation standard, based on precedent and confirmed by the characteristics of the claims, is not only efficient, but also constitutes a reasonable and fair measure of claimants' income losses.

50. As a final step in this validation process, the Panel used the C6-Salary sample data to examine the effect of the compensation cap referred to in paragraph 45, supra. The Panel's principal rationale for imposing a compensation limit was to minimize the risk of excessive compensation, while the actual level of the cap, reflecting Governing Council Decision 1,54/ sought to avoid treating less affluent claimants unfairly. Bearing in mind the distribution of monthly incomes and amounts claimed in the sample,55/ the Panel finds it appropriate to cap the compensation for claimants with monthly income levels above the low income cut-off level of US$ 750 per month.

51. Thus, of the claimants qualifying for compensation for C6-Salary losses, those with pre-invasion monthly incomes exceeding US$ 750 are awarded the lesser of the amount resulting from the application of the seven multiplier to their monthly income or the amount of their total claimed income loss. Given that many of the claimants who earned US$ 750 or less per month appear to have had difficulty expressing their losses, and were among the lowest paid workers in Iraq and Kuwait, these claimants are compensated at the amount resulting from the multiplier formula.

V. RECOMMENDATIONS

52. In addition to addressing issues raised by cross-category claims, this concluding section summarizes the Panel's recommendations to the Governing Council, pursuant to article 37(e) of the Rules, for the second instalment of category "C" claims.

53. While the Panel is mindful of the need to process all category "C" claims expeditiously, the Panel recalls that the second instalment of category "C" claims is based on the fast-track approach explained in paragraphs 12 through 14, supra. This approach covers claims that represent the most common types of loss and that do not otherwise present any special processing problems. Such loss types lend themselves to mass claims-processing through database applications, on the basis of sampling

and statistical modelling. Representing the aggregate result of the Panel's processing of these fast-track loss elements, the amounts recommended for compensation in the second instalment therefore resolve these claims in their entirety. The fast-track processing system described in the present report is also expected to resolve applicable category "C" claims in future instalments. With respect to the processing of all category "C" claims, the Panel underlines the particular relevance of paragraphs 19 through 21, supra.

54. Using a special program similar to that used for the processing of category "A" claims, the secretariat has performed a cross-check on a number of available identifiers in order to exclude as much as possible intra- and cross-category multiple recovery.56/ In this regard, the Panel has followed up on the procedures referred to in its First Report.57/ Given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by Governments and international organizations to prevent instances of overpayment to their claimants.

55. The Panel of Commissioners for category "B" claims has deemed it appropriate to transfer in whole, or in part, a number of claims to category "C". Considering the possibility of a partially or completely corresponding claim already having been filed under category "C", these transfer cases will require detailed review. The Panel plans to include these transferred claims in subsequent instalments of category "C" claims, beginning with those claims that can be processed under the Panel's fast-track approach.

56. The Panel hereby presents the amounts recommended for compensation on 62,121 claims in the second instalment of category "C" claims. Totalling US$ 425,057,699.08, these recommended compensation amounts are specified in annex II for each Government and international organization included in the second instalment. Annex III contains a breakdown of these amounts in respect of individual claimants; each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. Two hundred and sixteen claims in the second instalment of category "C" claims are not recommended for payment.

57. With reference to the considerations on the subject of interest expressed in the First Report,58/ the Panel recommends that interest be awarded on the claims included in this second instalment of category "C" claims as of 2 August 1990.59/

Geneva, 30 March 1996

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ The comprehensive First Report noted that future reports covering further instalments were expected to be more concise. First Report, p. 2.

4/ As with the first instalment, the Panel has benefited from the mass claims-processing expertise of Professor Francis McGovern of the University of Alabama. As further described in paragraph 36 infra and annex I, in adopting statistical modelling as a means to resolve several loss types in category "C" claims, the Panel also relied on the advice of statistical experts, Professors Yves Balasko and Gilbert Ritschard of the University of Geneva.

5/ Pursuant to article 33(2) of the Rules.

6/ S/AC.26/1991/1.

7/ Idem.

8/ A consolidated claim filed by the Government of Egypt on behalf of 915,527 Egyptian workers is under review by a separate Panel of Commissioners.

9/ The terms "loss type" and "loss element" are used interchangeably in this report. For a listing of loss elements, see First Report, p. 44, note 115.

10/ Ibid., pp. 2, 40-41 and 44-45.

11/ Ibid., pp. 40, 48, 138 and 181.

12/ Ibid., p. 39.

13/ In addition to C6-Salary losses, claims submitted by the Government of Egypt on page "C6" of the claim form for mental pain and anguish ("MPA") related to the deprivation of all economic resources ("C6-MPA" claims) were also included as a fast-track loss in the second instalment.

14/ First Report, pp. 47-48.

15/ Ibid., p. 36.

16/ The data capture for category "C" claims is conducted by the same company responsible for the data-entry of the Commission's category "A" claims verification records. The data-entry firm makes use of input software designed by the secretariat to capture all information contained in or reflected by the completed claim forms. To record this information as accurately as possible, standard double-entry and compare methods are applied.

17/ First Report, pp. 42-43 and 53.

18/ The First Report addresses the background of these problems. While certain claimants understood the claim form, or received adequate assistance in the quantification and presentation of their damages, for the vast majority of individuals the completion of the claim form was a highly unusual and difficult exercise. In addition, not all claimants were able to benefit from the guidance of a well-organized national claims program. Ibid., pp. 42-43.

19/ Ibid., p. 43.

20/ Ibid., pp. 41, 79 and 80.

21/ Ibid., p. 53.

22/ Similar quality control has been undertaken with regard to the claims submitted on diskette by the Governments of Kuwait and Egypt.

23/ See also First Report, p. 42.

24/ Ibid., pp. 39-47.

25/ Ibid., pp. 40-41. For a more detailed description of relevant precedents and sampling techniques, see "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", S/AC.26/1995/4 (the "Fourth Category 'A' Report"). More than 500,000 category "A" claims were processed on the basis of sampling.

26/ See Fourth Category "A" Report, paras. 46-60.

27/ Ibid., paras. 51-53.

28/ Ibid., paras. 54-58.

29/ The claims submitted by Kuwaiti nationals that are included in the second instalment relate exclusively to this loss element. Claims filed by Kuwaiti nationals for hostage taking or illegal detention will be processed in future instalments.

30/ In view of their small number, claims filed by nationals of OECD countries for hostage taking or illegal detention for three days or less are to be reviewed separately at a later stage.

31/ The Panel's processing considerations for C1-MPA claims and the substantive criteria applied to verify and compensate such claims are set forth in the First Report, pp. 82-96. Furthermore, as a threshold requirement relevant to all category "C" loss types, the Panel verified in the first instalment whether claimants were resident in Iraq or Kuwait at the time of the invasion. First Report, pp. 52-53 and 90. In the current sampling population, over 99 per cent of claimants provided evidence to support the fact of their residence in Iraq or Kuwait.

32/ Approximately 94 per cent of claims filed by nationals of OECD countries for hostage taking or illegal detention for more than three days satisfied the Panel's criteria. With regard to claims for being forced to hide on account of a manifestly well-founded fear for one's life, all claims by nationals of OECD countries and 99.5 per cent of claims by Kuwaiti nationals satisfied the Panel's criteria. These results are consistent with United Nations reports regarding incidents and patterns of

hostage taking, detention and forced hiding during the invasion and occupation of Kuwait.

33/ S/AC.26/1992/8. The Panel notes that some of the C1-MPA claims that satisfy the Panel's criteria for forced hiding or for hostage taking or illegal detention for more than three days do not indicate the number of days on the claim form. Where necessary, the Panel intends for such claims to be reviewed manually.

34/ First Report, p. 143.

35/ See also First Report, p. 129, note 257 and p. 132, note 258.

36/ First Report, p. 143.

37/ Ibid., pp. 146-147.

38/ See also First Report, pp. 144-147.

39/ For an explanation of the variables see annex I, infra.

40/ First Report, pp. 129-147.

41/ See also First Report, pp. 59-81.

42/ Ibid., pp. 148-158.

43/ Idem.

44/ Claims not meeting the ownership test on the basis of the information contained in the database are to be reviewed separately.

45/ The MVV Table provides standard market values indexed by make, model and year, for motor vehicles in Kuwait for the years 1980 to 1990. Where possible, the applicable MVV Table value was determined and entered into the database as part of the data entry process.

46/ A more detailed description of the valuation method applied to C4-MV claims is contained in the First Report, pp. 155-157.

47/ Ibid., pp. 164-165.

48/ As mentioned in note 13, supra, the Panel also applied its fast-track processing approach to claims filed by the Government of Egypt for C6-MPA losses. Among the processing considerations described for this loss type in the First Report, the Panel notes in particular that the claimant's asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. First Report, p. 194.

49/ This methodology takes into account a number of factors, including relevant Iraqi and Kuwaiti legislation, an expert study of entitlements payable upon termination of employment, the number and characteristics of the claims included in the first instalment, the number of claims expected in other instalments, and the evidence submitted in support of the claims. Ibid., pp. 168-194.

50/ For this purpose, a claimant's C6-Salary claim, in principle, is represented by the aggregate of the amount stated in the "Wages or Salary" and "Other" fields of the "C6" page of the claim form.

51/ First Report, p. 181. The number of C6-Salary claims is currently estimated to exceed 200,000.

52/ Ibid., p. 170.

53/ Various forms of documentary evidence (e.g., employment contracts, pay stubs, employer affidavits, work permits) were the most common type of evidence submitted. A majority of claimants also included personal statements relating to their C6-Salary claim. Of those claimants who did not submit additional evidence for this loss type, almost all have provided verifiable employer or sponsor information on the claim form. The vast majority of claimants without additional evidence were found to be in the lower income group.

54/ S/AC.26/1991/1.

55/ For all potential compensation cap levels considered, the differences appeared to be minimal in terms of average and total monetary and percentage consequences, and in terms of the number of claimants affected.

56/ See S/AC.26/Dec.22 (1994) and S/AC.26/Dec.24 (1994).

57/ First Report, pp. 54-57 and 71-72.

58/ Ibid., pp. 32-33.

59/ See also S/AC.26/1992/16.

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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$ 100,000 (CATEGORY "C" CLAIMS)

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GE.96-63339

INTRODUCTION

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$ 100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure[1] (the "Rules"). These recommendations concern the third instalment comprising 64,067 category "C" claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.

2. The Panel has reviewed the third instalment of category "C" claims in a continuum with its processing of the first and second instalments of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$ 100,000 (Category 'C' Claims)" and its annexes[2] (the "First Report"), and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$ 100,000 (Category "C" Claims)" and its addendum[3] (the "Second Report"), which have been approved by the Governing Council.[4] The third instalment, composed of category "C" claims submitted by the Governments of Kuwait and Egypt, has been processed on the basis of the considerations, precedents and determinations expressed in the First and Second Reports, which the present report incorporates by reference.[5]

3. This report reflects the work performed by the Panel since it issued its recommendations on the second instalment of category "C" claims. The Panel met with the Commission's secretariat at the secretariat's headquarters in Geneva on 14 June 1996. The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the third instalment.

I. CLAIMS PROCESSING APPROACH

4. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council Decisions, the Rules, and other relevant principles and practices of international law. In addition to the information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of the third instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance

with article 16 of the Rules; and relevant United Nations and other reports.

5. In terms of defining the Panel's mandate, the Governing Council's Decision 1 has particular relevance.6/ In this Decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, Decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted."7/ Consistent with this Decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts.

6. The First and Second Reports provide an extensive discussion of the considerations and preparations underlying the processing methodologies applied to the category "C" claims.8/ In view of the Panel's mandate, and in keeping with the "fast-track" processing approach applied to the second instalment of claims, the application of statistical sampling and modelling techniques continues to form the basis for the third instalment of category "C" claims.9/ The Panel notes that, as explained in the Second Report, claims not meeting the fast-track processing criteria also require expedited processing and will be included in future instalments. However, given the large number of claims received in category "C", the Panel has determined that those claims that can be processed efficiently through database-assisted techniques will be addressed first.

II. CLAIMS INCLUDED IN THE THIRD INSTALMENT

7. The Panel is aware that the Governments of Kuwait and Egypt have submitted the largest number of category "C" claims to the Commission.10/ Moreover, as noted in the Second Report, Kuwait and Egypt were the only Governments to submit claims in both computer and paper format.11/ The submission of claims in computer format has made claims information readily available for thousands of claimants on the Commission's database, providing access to data that can be processed efficiently through the Panel's fast-track method. The Panel is also aware that the data entry12/ of claims information for other submitting Governments and international organizations is progressing and that, once the data entry of these claims is complete, additional claims will become available for processing by means of the fast-track method. In view of the above, the third instalment of category "C" claims is composed of claims submitted by the Governments of Kuwait and Egypt. The processing of these claims at this stage will result in time-savings and will facilitate the processing of further claims submitted by other Governments and international organizations, which will be included in future instalments.

8. The Kuwaiti claims included in the third instalment involve only those losses claimed on the "C1" page of the claim form for mental pain and anguish related to forced hiding ("C1-MPA" claims).13/ The Egyptian claims in this instalment include losses claimed on the "C1" page for transportation, food, lodging, relocation and other related losses ("C1-Money" claims); losses claimed on the "C4" page for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" claims); losses claimed on the "C5" page related to bank accounts located in Kuwait ("C5-Kuwait bank" claims); and wages and salary losses claimed on the "C6" page ("C6-Salary" claims). In addition to C6-Salary losses, claims submitted by the Government of Egypt on the "C6" page for mental pain and anguish related to the deprivation of all economic resources ("C6-MPA" claims) have also been included as a fast-track loss in the third instalment.14/

III. RECOMMENDATIONS

9. The Panel hereby presents the amounts recommended as compensation for 64,065 claims in the third instalment of category "C" claims. Totalling US$ 323,776,505.21, the recommended compensation amounts are listed in the summary table below for the two submitting Governments. The Governments of Kuwait and Egypt will each be provided with a confidential listing containing the individual recommendations made in respect of their claimants. The amounts recommended for compensation in the third instalment resolve these claims in their entirety. Two claims in the third instalment of category "C" claims are not recommended for payment. The claims not recommended for payment relate exclusively to C5-Kuwait bank and C6-MPA losses for Egypt.15/

Summary of Recommendations

Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
EGYPT	16,065	2	115,378,505.21
KUWAIT	48,000		208,398,000.00
Total	64,065	2	323,776,505.21

10. Using a special program similar to that used for the processing of category "A" claims, the secretariat has performed a cross-check on a number of available identifiers in order to exclude as much as possible intra- and cross-category multiple recovery.16/ The Panel is satisfied that the secretariat has used reasonable and practical means to detect the

existence of duplicate claims. However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by the Governments of Kuwait and Egypt to prevent instances of overpayment to their claimants.

11. With reference to the considerations on the subject of interest expressed in the First Report,17/ the Panel recommends that interest be awarded on the claims included in this third instalment of category "C" claims as of 2 August 1990.18/

12. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 14 June 1996

Mr. L. Yves Fortier, Q.C.
Chairman

Mr. Sergei N. Lebedev
Commissioner

Mr. Philip K. A. Amoah
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ S/AC.26/1996/1 and S/AC.26/1996/1/Add.1/Rev.1.

4/ S/AC.26/Dec.25 (1994) and S/AC.26/Dec.36 (1996).

5/ The comprehensive First Report noted that future reports covering further instalments were expected to be more concise. First Report, p. 2.

6/ S/AC.26/1991/1.

7/ Idem.

8/ See First Report, pp. 49-208 and Second Report, paras. 24-51.

9/ The "fast-track" processing approach is described in greater detail in the Second Report. See, in particular, paragraphs 8 through 14.

10/ Approximately 166,000 and 92,500 category "C" claims have been filed by the Governments of Kuwait and Egypt respectively.

11/ Pursuant to article 7(2) of the Rules.

12/ See Second Report, para. 18.

13/ See the discussion in the Second Report on the methodology used in resolving claims for forced hiding. Second Report, paras. 25-32.

14/ See Second Report, note 48.

15/ In connection with the rejection of these claims, the Panel notes in particular that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p.194 and Second Report, note 48.

16/ See S/AC.26/Dec.22 (1994) and S/AC.26/Dec.24 (1994).

17/ First Report, pp. 32-33.

18/ See also S/AC.26/1992/16.

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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SIXTH INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS)

GE.96-64158

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Introduction

1. This report contains the recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims") pursuant to article 37(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10, hereinafter the "Rules"), concerning the sixth and final instalment of claims submitted to the Panel by the Executive Secretary of the United Nations Compensation Commission (the "Commission").1/ Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 (the "relevant jurisdictional period").2/ Category "A" claims are among the "most urgent claims" for which the Governing Council decision on "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1991/1, Decision 1), has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief".

2. The first three reports issued by the Panel made recommendations with respect to 348,645 category "A" claims out of a total of more than 900,000 such claims registered with the Commission. The recommendations for the first three instalments of category "A" claims were mainly made on the basis of the expedited procedure provided by article 37 (a) of the Rules, i.e., verification by matching against information in the secretariat's computerized database.3/ In its fourth and fifth reports, which covered an additional 435,033 claims, the Panel proceeded to the second phase of verification using the expedited procedure provided by article 37(b) of the Rules, i.e., checking individual claims on the basis of sampling.4/

3. Many of the claims contained in the sixth instalment have also been verified on the basis of the sampling methodology, while others have been examined individually and have been recommended for payment, or otherwise, on the basis of the evidence of departure attached to each claim. The legal principles and issues underlying the sampling methodology, the status of this methodology under international law and various national jurisdictions, and the sampling methodology as such are discussed in the fourth report. A description of the methodology used to review claims individually is contained in section II.E, infra.

4. The Panel held a working session with the secretariat of the Commission from 17 to 20 June 1996 to discuss and approve the methodology and procedures used by the secretariat to process the sixth instalment of category "A" claims and to initiate the review of the claims included

therein. The Panel held a further session from 8 to 10 July 1996 to complete the review of claims in the sixth instalment and to finalize this report.

I. COMPOSITION OF THE SIXTH INSTALMENT OF CATEGORY "A" CLAIMS

5. The finalization of the sixth report comprising the remaining category "A" claims has been done keeping in view the suggestion made by the Governing Council that the sixth instalment of category "A" claims should be submitted to the Council for approval at its October 1996 meeting. With this report the Panel will have completed its review of all the category "A" claims that have been filed with the Commission.5/

6. All of the claims in the sixth instalment were verified through either the sampling methodology or individual examination. The majority of the claims in this instalment were reviewed pursuant to the determinations made by the Panel by applying the sampling methodology discussed in the fourth report. Among these are claims that were received at the secretariat subsequent to the 1 January 1995 filing deadline established in Governing Council Decision 23 [S/AC.26/Dec.23 (1994), Decision 23], which could not be included in the fourth or fifth instalments because they were accepted for filing by the Governing Council only after the claims included in those two instalments had already been processed through sampling. Other claims included in the sixth instalment were submitted within the submission deadline but had been kept from further processing due to possible duplication or to their being in an improper format (see section II.A and B, infra). Once these issues had been clarified, these claims were also dealt with through sampling and are now included in this instalment.

7. A small portion of the claims included in this instalment were examined individually, pursuant to the Panel's determinations as to the composition of the second instalment (see section III. A and B of the second report) and by application of the sampling methodology (see note 4). The Panel also reviewed individually the claims submitted by Iraqi dual nationals (see section II.D, infra).

8. Additionally, claims for higher individual or family amounts that were submitted by claimants who have also filed claims in other categories, contrary to the instructions of the Governing Council, are dealt with in this instalment (see section II.C, infra). Finally, this instalment includes claims that, having been approved for payment in previous

instalments, were corrected in accordance with article 41 of the Rules (see section III, infra).

II. THE PROCESSING OF THE SIXTH INSTALMENT

A. Format of claims

9. As explained in section IV.B.1 of the first report, one of the purposes of the preliminary "validation" process to which all the computerized claims in the "A" Claims Database were subjected was to determine whether they had been submitted in the proper format, i.e., whether sufficient information about the claimant's identity had been given in the claim form, whether information about family members had been provided in claims for family amounts, and whether the claims contained the proper codes for, inter alia, the amount claimed, the submitting country and the claimant's nationality. When the computer had detected that any of these technical requirements had not been met in a particular claim, such a claim had previously been separated from the other claims and had not been allowed to move to the subsequent processing stages. Therefore, no such claims had been included in the previous five instalments.

10. In order that these claims could continue to the subsequent phases of the validation process and eventually to a decision on the merits, i.e., whether the claimants departed from Iraq or Kuwait within the relevant jurisdictional period, appropriate steps were taken as are summarized below.

1. Claims with insufficient claimant identity information

11. Eleven claims were detected as having no valid information in any of the fields that would make it possible to identify the claimants (claimant's name, passport number, Kuwait's Civil Identification Number, address, sponsor's name and family members' names). The Panel did not review these claims on the merits and holds them not to be eligible for compensation.

2. Improper family claims

12. In the case of the "improper family claims", i.e., those claims where a family amount of US$5,000 or US$8,000 was claimed but no family member was listed in the corresponding field, the amounts claimed were converted to the higher individual amount of US$4,000.6/

3. Appropriate compensation amount codes

13. In the computerized category "A" claim form, two fields contain information concerning the compensation amount claimed. One is in the form of check-boxes--replicating the boxes in the original paper claim form--in which a claimant could tick one of the four amount options, i.e., US$2,500, US$4,000, US$5,000 or US$8,000. The computerized claim form converts these options into corresponding numerical codes, i.e., 1, 2, 3 or 4. These "claim amount codes" need to correspond to the "real" claim as the computer system calculates the compensation per claim on the basis of these codes and produces the report of compensation awarded per claim that is provided to the Governments and international organizations upon approval of the relevant instalment by the Governing Council.

14. The second field containing information about the amount claimed is the one in which the complete figure of any of the four amount options claimed is displayed on the computer screen in order to provide the data verification analyst with information about the amount claimed. This "total claim amount" field does not replicate any field in the original paper claim form, but rather the figure displayed is generated from the claim amount code entered, e.g., when claim amount code 1 has been entered, the total claim amount of US$2,500 appears on the computer screen.

15. Technically invalid claim amount codes were replaced by the correct codes when information was contained in the claim form that enabled the determination of the appropriate code, such as family members or total claim amount provided. Thus, for each total claim amount of US$2,500, US$4,000, US$5,000 or US$8,000, respectively, the corresponding claim amount code of 1, 2, 3 or 4, was entered to replace the existing technically invalid code.

B. Duplicate claims within the "A" claims category

16. In section IV.B.3 of the first report, the Panel noted that a number of claims in the "A" Claims Database were duplicates. This duplication was mainly due to the inadvertent multiple submission of claims or to claims being loaded more than once into the secretariat's computerized database.

17. In order to prevent multiple recovery resulting from such duplication, the secretariat carried out a three-level validation process aimed at identifying duplicate claims. First, a computer programme compared all claims to each other using the following combinations of

criteria: claimant's nationality, name and year of birth; or claimant's nationality, passport number and year of birth. Claims found to be duplicates were at that stage separated from the other claims as "possible duplicates" and kept from further processing on the merits. Therefore no "possible duplicate" claims were included in the first, second, third, fourth or fifth instalments.

18. Second, the claims were verified to determine whether "possible duplicate" claims were in fact duplicates. To do this, another computer programme compared all "possible duplicate" claims to each other using the following combinations of criteria: claimant's Civil Identification Number issued by Kuwait, nationality and birth year; or claimant's nationality, name, passport number and birth year. Claims in which any of these combinations were found to be identical were determined to be "real duplicates"; one of the claims was then subjected to further processing on the merits and the corresponding duplicate or duplicates were identified as "confirmed duplicates" and removed from further processing.

19. "Possible duplicate" claims that could not be identified as being "real duplicates" during the second stage were then subjected to a third level of validation. This consisted of a manual comparison of printouts of the data contained in the computerized claim forms such as claimant's name, nationality, passport number, date of birth, place of birth, home address or any other available information. Claims found to have the same information were determined to be "real duplicates"; one of the claims was then subjected to further processing on the merits and the corresponding duplicate or duplicates were identified as "confirmed duplicates" and removed from further processing.

20. A total of 35,905 claims from 43 countries and seven international organizations were identified as "confirmed duplicates". The remaining claims were subjected to further processing on the merits after their corresponding "confirmed duplicates" had been removed from further processing and were verified on the basis of the same sampling methodology that was used for the claims in the fourth and fifth instalments.

C. Limitations on claiming in more than one category

21. As explained in sections I.C and IV.C.2 of the first report, the filing of a category "A" claim may limit the claimant's option of filing claims in other categories before the Commission. By filing a category "A" claim for the US$4,000 individual amount or the US$8,000 family amount, a

claimant has agreed not to file claims under any other category. Also, if a claimant intends to file a claim for departure for more than US$2,500, and the loss can be documented, he or she may claim for the full amount of departure losses in a category other than category "A".

22. In Decision 21 the Governing Council established that claimants who have selected a higher amount under category "A" (US$4,000 or US$8,000) and have also filed a claim in category "B", "C" or "D", will be deemed to have selected the corresponding lower amount under category "A", i.e., US$2,500 or US$5,000 (see section IV.D.1 of the fourth report).

23. In an effort to enforce the above rules, the secretariat compared in the Claims Database all category "B" claims with the category "A" claims made for US$4,000 or US$8,000. Where a claimant who filed a category "B" claim was detected by the computer to have also filed a category "A" claim for US$4,000 or US$8,000, these amounts were respectively reduced to US$2,500 and US$5,000 in the category "A" claim, pursuant to Decision 21.

24. In addition, the secretariat is in the process of comparing all category "C" and "D" claims with the category "A" claims made for US$4,000 or US$8,000. Since not all of the category "C" and "D" claims that have been submitted to the Commission have been loaded into the Claims Database yet, this comparison can only be completed once the loading is concluded. Should a claimant who has filed a category "C" or "D" claim be detected to have also filed a category "A" claim for any of the higher amounts, the reduction in the amount of the claim that is mandated by Decision 21, and any consequential corrections, will be carried out by the secretariat at the time that the comparison has been completed.7/

25. Also, a comparison in the Claims Database of all of the category "C" claims containing a "C1" departure claim against all of the category "A" claims is being performed. If, as a result of this comparison, a claimant who has filed a "C1" departure claim is detected to have also filed a category "A" claim, the corresponding deduction will be made from the amount claimed in category "C".8/ A similar comparison will be made between all category "D" claims containing a "D1" departure claim and all of the category "A" claims.

26. In several cases, the comparison procedures described in paragraph 23, supra, affected category "A" claims that had already been approved for payment in previous instalments. This made it necessary to correct the corresponding awards (see section III, infra).

D. Claims filed on behalf of Iraqi nationals

27. Governing Council Decision 1 established that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State" (S/AC.26/1991/1, Decision 1, paragraph 17). As a result, unless Iraqi nationals have a second nationality they are not eligible to claim compensation before the Commission. This also means that, to be entitled to claim compensation, the second nationality must be possessed in good faith.

28. Neither the Rules nor other Governing Council decisions define the term "bona fide nationality". Therefore, the Panel had to establish the criteria to be met in order for an Iraqi dual national to be considered a bona fide holder of a second nationality.

29. In adopting a method to deal with this issue, the Panel was mindful of two considerations: (1) that the claims in connection with which this issue arose were "urgent claims" for the compensation of which "expedited procedures" had been prescribed by the Governing Council (Decision 1); and (2) that the issue to be determined was whether the second nationality was acquired bona fide in the context of eligibility to be able to claim compensation before the Commission. Neither consideration involved the more complex issue of the effectiveness of nationality. The Panel, therefore, aimed for a method of evaluating the bona fide nationality of these claimants that could be applied without having to resort to lengthy procedures that are incompatible with an expedited approach.9/

30. The logic of the method adopted by the Panel is based on the object of the determination that is to be made, namely, whether an Iraqi dual national had acquired his or her second nationality mainly or solely for the purpose of becoming eligible to claim compensation before the Commission. Applying this logic, it seemed reasonable to hold that an Iraqi dual national would not be considered to have applied for or acquired a second nationality in bad faith if he or she had applied for the second nationality before the eligibility criteria for claims had been established by the Governing Council in Decision 1 on 2 August 1991 ("the relevant date"). Thus, if an Iraqi dual national had applied for or acquired a second nationality before the relevant date, he or she was considered to be the bona fide holder of the second nationality.

31. This would not have precluded the Panel from holding that where an Iraqi dual national had acquired the second nationality after the relevant

date, the second nationality was acquired bona fide, if the particular facts and circumstances of the case justified such a conclusion. In fact, however, the records show that no Iraqi dual national who had submitted a claim had applied for or acquired a second nationality after the relevant date. The Panel, therefore, holds that all Iraqi dual nationals who filed claims with the Commission were holders in good faith of their second nationality.

32. Given the limited number of claims filed by Iraqi dual nationals, the Panel decided that determination on the merits, i.e., whether the claimants departed from Iraq or Kuwait within the relevant jurisdictional period, should be based on an individual review and assessment of the original paper claim forms.

33. In compliance with Decision 1, the Panel did not consider the claims filed on behalf of four Iraqi nationals who do not have the nationality of another country.

E. Methodology adopted for the individual review of claims

34. Article 37 of the Rules authorized the use of further verification, as circumstances warrant, for those claims that could not be verified through matching or sampling. Pursuant to this provision, and on the basis of the results of the review of the claims on a sample basis (see paragraphs 82 and 83 of the fourth report), the Panel determined that certain claims were to be subjected to individual review. These claims included:

(a) claims that were registered in the system as having a date of departure outside the relevant jurisdictional period;

(b) claims that were registered as having no evidence attached; and

(c) claims that were registered as having types of evidence that were not, or were poorly, represented in the sample of the claims filed by the respective Governments and international organizations.

35. In total, 31 Governments and one international organization submitted claims that fell into one or more of these categories.

1. Identification of the claims

36. The claims that fell into one of the above categories were first identified in the category "A" Claims Database. Lists of these claims were

then produced and sent to the respective Governments and international organizations with cover letters requesting that the original paper claim forms, together with their attachments, be forwarded to the secretariat.

2. Assessment of the claims

(a) Determinations on the evidentiary value of documentation attached to claims

37. The general determinations that the Panel made on the probative value of the evidence in the context of the sampling review were also applied to the individual review of the claims. In determining the probative value of the different types of evidence attached to the claim forms the Panel applied the legal criterion set out in Decision 1 and the Rules, i.e., proof of departure from Iraq or Kuwait during the period of 2 August 1990 and 2 March 1991, as well as the general determinations made regarding the evidentiary value of the Arrival/Departure Records (see section IV.D.3 of the first report).

(b) Review and assessment of the claims

38. The individual review of the claims involved the manual examination by the secretariat of every claim form together with the evidence attached in order to determine whether the claimant departed from Iraq or Kuwait within the relevant jurisdictional period. The same evidentiary items that were recognized as establishing proof of departure during the sampling review of the claims were also recognized for the individual review (see section E.2 of the fourth report).

(i) General determinations

39. After reviewing samples of the claims processed by the secretariat, the Panel made a number of general determinations. Unlike the sampling exercise, where three possible assessment categories were adopted (i.e., "conclusive", "possible" and "insufficient"), only two assessment categories were adopted for the individual review of claims: "conclusive" and "insufficient".

40. Claims were assessed as "conclusive" where:

(a) the claimant submitted an item of evidence that by itself proved departure from Iraq or Kuwait within the relevant jurisdictional period;

(b) the claimant submitted a combination of items of evidence which proved departure from Iraq or Kuwait within the relevant jurisdictional period;

(c) the claimant submitted an attestation from his or her Government or employer confirming that he or she was in Iraq or Kuwait and left during the relevant jurisdictional period;

(d) the claimant submitted a statement describing his or her departure from Iraq or Kuwait within the relevant jurisdictional period and the circumstances of the departure fell into a pattern that had been identified amongst other claimants that were assessed as "conclusive".

41. Claims were assessed as "insufficient", and thereby held not to be eligible for compensation, where:

(a) the claimant did not attach any evidence to his or her claim form;

(b) the claimant attached evidence that manifestly disproved that he or she left Iraq or Kuwait within the relevant jurisdictional period;

(c) the claimant attached evidence that was considered to have no probative value to establish his or her presence in, and departure from, Iraq or Kuwait within the relevant jurisdictional period.

(ii) Specific determinations

42. In reviewing the claims submitted by each Government and international organization which were not covered by the above general determinations, the Panel decided that such claims were to be assessed as "conclusive" if the following evidentiary items were attached to the claim form:

(a) an item proving presence in Iraq or Kuwait within the relevant jurisdictional period combined with:

(i) a personal statement asserting departure; or

(ii) a certification of entry into the claimant's home country issued by the immigration authorities; or

(iii) a departure date within the relevant jurisdictional period stated on the claim form;

(b) a personal statement asserting departure from Iraq or Kuwait within the relevant jurisdictional period combined with:

(i) a departure date within the relevant jurisdictional period stated on the claim form; or

(ii) a declaration by a Government official confirming the facts described by the claimant in his or her personal statement; or

(iii) a written confirmation by Government authorities of the loss of the claimant's personal documents.

43. In addition to the above specific determinations, in a number of cases claims were assessed to be "conclusive" where, having regard to the fact that a departure date within the relevant jurisdictional period was stated on the claim form and other facts and circumstances, weight was given to such evidentiary items as:

(a) an attestation issued by the claimant's employer confirming that the claimant was employed in Iraq or Kuwait during a period covering the relevant jurisdictional period; or

(b) a renewable work visa issued by the Iraqi or Kuwaiti authorities before the relevant jurisdictional period; or

(c) an entry stamp into the claimant's home country within the relevant jurisdictional period; or

(d) an immigration document granting the claimant leave to enter a third country; or

(e) the name of the claimant's sponsor or employer if that name was similar to that of other claimants that were assessed as "conclusive".

44. In reviewing the claims and coming to its conclusions as to whether the claims should be assessed as "conclusive" or "insufficient", the Panel took into consideration other relevant information such as the departure reports prepared by the secretariat describing the socio-economic background and evacuation routes of the foreign worker communities in Iraq and Kuwait for the countries that together submitted the majority of category "A" claims, the Manual of Arrival/Departure Records that were used during the matching exercise, and the summary reports describing the results of the review of the sample of each country or international organization. Finally, the Panel kept in view the specific determinations made by it during the sampling of the claims.

III. CORRECTIONS OF DECISIONS

45. The secretariat has drawn the attention of the Panel to the fact that the compensation amounts approved in previous instalments for payment to a number of claimants from several countries needed to be amended. In some cases the need for amendments was brought to the attention of the secretariat by the submitting Governments in accordance with article 41 of the Rules.

46. In other cases, the secretariat, while performing the necessary searches for duplicate claims within category "A" and between categories "A" and "B", identified claims that needed to be amended. As a result of the process described in section II.B, supra, some duplicate claims were found to have been approved in more than one instalment. Also, the comparison described in section II.C, supra, showed that payment of compensation had already been approved for some of the category "A" claimants who had claimed for higher amounts and had also filed a category "B" claim.

47. In light of the above, the Panel recommends that the revised compensation amounts as listed in the following tables be approved for payment:

FIRST INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bosnia and Herzegovina	408,000.00	404,000.00
France	997,500.00	992,500.00
India	24,736,000.00	24,728,500.00
Iran	672,000.00	590,500.00
Pakistan	12,226,000.00	12,221,000.00

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	51,523,000.00	51,519,000.00
Czech and Slovak Federal Republic a/	55,000.00	58,000.00
India	50,158,500.00	50,127,500.00
Iran	52,977,500.00	50,266,000.00
Jordan	95,988,500.00	96,437,000.00
Kuwait	87,259,500.00	87,523,500.00
Pakistan	19,835,500.00	19,819,000.00
Philippines	5,779,500.00	5,767,500.00
Sri Lanka	77,284,000.00	77,278,500.00
United States	263,500.00	261,000.00
UNDP (Jerusalem)	52,500.00	42,500.00

THIRD INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Egypt	174,295,500.00	174,259,000.00

a/ These claims were submitted before the Czech and Slovak Federal Republic ceased to exist. Awards of compensation will have to be paid to the Governments of the Czech Republic and the Slovak Republic, respectively, pursuant to an agreement between the two Governments.

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Federal Republic of Yugoslavia (Serbia & Montenegro)	1,016,000.00	1,012,000.00
India	16,173,500.00	16,139,000.00
Iran	68,089,000.00	67,718,000.00
Jordan	93,155,000.00	93,314,000.00
Kuwait	104,650,500.00	104,627,000.00
Philippines	6,039,500.00	5,515,500.00
Sri Lanka	52,929,500.00	52,457,000.00
United States	168,500.00	165,500.00

FOURTH INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,767,500.00	52,759,500.00
Bosnia & Herzegovina	3,553,000.00	3,541,000.00
Egypt	207,373,000.00	207,354,000.00
Federal Republic of Yugoslavia (Serbia & Montenegro)	3,761,000.00	3,773,000.00
India	145,209,500.00	144,894,500.00
Iran	4,270,000.00	3,485,000.00
Jordan	17,708,500.00	17,642,500.00
Kuwait	41,002,500.00	40,990,500.00
Lebanon	3,916,500.00	3,911,500.00
Pakistan	22,829,000.00	22,808,000.00
Philippines	30,684,500.00	30,591,000.00
Sri Lanka	71,994,500.00	71,978,500.00
Sudan	39,814,500.00	39,817,500.00
Syria	26,360,000.00	26,352,000.00
Turkey	6,306,000.00	6,302,000.00
United Kingdom	1,379,500.00	1,380,000.00
United States	836,000.00	812,500.00
Yemen	25,572,500.00	25,565,500.00

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
UNDP (United Arab Emirates)	2,500.00	8,000.00

FIFTH INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,372,500.00	52,351,000.00
Bosnia & Herzegovina	3,532,000.00	3,528,000.00
Canada	407,000.00	386,500.00
China	5,716,000.00	5,712,000.00
Egypt	217,074,000.00	217,009,000.00
Federal Republic of Yugoslavia (Serbia & Montenegro)	3,818,500.00	3,794,500.00
India	145,908,500.00	145,473,000.00
Iran	4,502,000.00	3,753,000.00
Jordan	17,416,000.00	17,281,500.00
Kuwait	39,897,500.00	39,883,500.00
Lebanon	3,923,000.00	3,908,000.00
Pakistan	23,213,500.00	23,178,000.00
Sudan	38,661,000.00	38,662,000.00
Syria	26,823,500.00	26,801,000.00
United Kingdom	1,316,500.00	1,308,500.00
United States	838,500.00	833,500.00
Yemen	29,195,000.00	29,181,000.00
UNHCR (Canada)	63,000.00	59,000.00

48. The Panel recommends that any reduction in the amount claimed under category "A", pursuant to Decision 21, that may result from having identified a claimant who has submitted a category "A" claim for a higher compensation amount and a category "C" and/or "D" claim should be carried out by the secretariat when the comparison between the claims in these categories is complete (see paragraph 24, supra). Necessary corrections in

compensation amounts payable should be made at that time. All Governments and international organizations concerned will be notified in due course.

IV. RECOMMENDED COMPENSATION FOR THE SIXTH INSTALMENT OF CATEGORY "A" CLAIMS

49. Pursuant to article 37(e) of the Rules, the Panel hereby presents its recommendations on the claims comprising the sixth instalment of category "A" claims.

50. Having considered the results of the verification of claims accomplished through sampling and individual review and having further considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 80,456 claims submitted by 59 Governments and by seven international organizations. The total recommended awards of compensation for the sixth instalment amounts to US$319,730,500.

51. The following summary table lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation, as well as the number of claims which were held by the Panel not to be eligible for compensation:

RECOMMENDED COMPENSATION AMOUNTS

Country	Number of Claims Not Recommended for Payment	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	3	-	-
Australia	2	14	64,500.00
Austria	-	15	69,500.00
Bahrain	14	7	28,500.00
Bangladesh	353	16,947	66,178,000.00
Bosnia and Herzegovina	-	501	2,048,000.00
Brazil	7	147	616,500.00
Bulgaria	-	2	13,000.00
Canada	-	11	51,000.00
China	-	102	408,000.00
Croatia	-	1	4,000.00

Country	Number of Claims Not Recommended for Payment	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Czech and Slovak Federal Republic b/	-	3	13,000.00
Egypt	40	6,837	18,745,500.00
Ethiopia	-	24	90,000.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	-	215	880,000.00
France	2	6	27,000.00
Germany	3	1	4,000.00
Greece	1	-	-
Hungary	-	2	12,000.00
India	446	4,439	17,441,500.00
Iran	-	1,068	5,838,000.00
Ireland	4	7	22,000.00
Italy	-	11	35,500.00
Japan	1	13	67,500.00
Jordan	12,902	4,257	18,736,500.00
Kenya	6	-	-
Korea, Republic of	-	17	61,000.00
Kuwait	-	2,689	17,170,000.00
Lebanon	-	164	410,000.00
Malta	2	-	-
Mauritius	1	1	4,000.00
Morocco	16	606	2,468,500.00
Nepal	-	10	40,000.00
Netherlands	-	1	8,000.00
New Zealand	-	1	4,000.00
Norway	1	-	-
Pakistan	1	12,047	46,786,000.00

b/ These claims were submitted before the Czech and Slovak Federal Republic ceased to exist. Awards of compensation will have to be paid to the Governments of the Czech Republic and the Slovak Republic, respectively, pursuant to an agreement between the two Governments.

Country	Number of Claims Not Recommended for Payment	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Philippines	17	15,353	61,056,000.00
Poland	2	502	2,038,000.00
Romania	-	21	55,000.00
Russian Federation	48	598	3,380,000.00
Senegal	-	1	4,000.00
Slovenia	-	2	6,500.00
Somalia	3	3	15,500.00
Spain	3	1	4,000.00
Sri Lanka	4,724	9,242	36,889,500.00
Sudan	-	134	512,000.00
Sweden	3	-	-
Switzerland	2	-	-
Syria	72	1,457	5,218,500.00
Thailand	2	567	2,248,500.00
The former Yugoslav Republic of Macedonia	-	3	12,000.00
Tunisia	130	499	1,867,000.00
Turkey	-	348	1,300,500.00
Ukraine	7	44	180,000.00
United Kingdom	4	102	348,500.00
United States	-	9	30,000.00
Vietnam	-	871	3,484,000.00
Yemen	13	394	1,823,500.00
UNDP (Algeria)	-	5	24,000.00
UNDP (Jerusalem)	-	9	37,000.00
UNDP (Washington)	5	1	4,000.00
UNDP (Yemen)	-	114	807,000.00
UNHCR (Bulgaria)	55	7	30,000.00
UNHCR (Canada)	3	-	-
UNHCR (Geneva)	1	3	10,500.00
Total	18,899	80,456	319,730,500.00

52. A table containing the breakdown of the amounts to be paid to each individual claimant and a list of the individual claimants held by the Panel not to be eligible for compensation will be provided to each respective Government and international organization.

53. On the basis of the considerations formulated in section IV.C.3. of the first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council Decision on "Awards of Interest" (S/AC.26/1992/16, Decision 16). The Panel reiterates its opinion that the phrase "the date the loss occurred", referred to in Decision 16, should be interpreted to be a single date for all category "A" claims and that the date of the invasion, 2 August 1990, should serve as that date.

54. The sixth report marks the completion of the review of category "A" claims. The mandate of the Panel required it to apply "simple and expedited procedures" to deal with claims that were regarded as among "the most urgent claims." The overwhelming majority of these nearly one million claims were submitted by workers who had to leave Kuwait or Iraq between 2 August 1990 and 2 March 1991 following Iraq's invasion of Kuwait. The prompt payment of compensation to these claimants, as well as the provision of interim relief, has thus been considered to be a matter of the utmost urgency. In discharging its responsibilities, the Panel has endeavoured to maintain a just balance between the claimants' interest in an expeditious determination and the need to ensure the proper verification of the claims. In order to accomplish this, the Panel applied objective criteria ing innovative and practical techniques and methods which enabled the Panel to carry out expeditious verification of claims in a manner consonant with the requirements of fairness and justice.

55. The Panel renews its exhortations in its earlier reports (see paragraph 93 of the fourth report and paragraph 11 of the fifth report) that resources should be found to effect prompt payment of compensation approved by the Governing Council so as to provide meaningful relief as expeditiously as possible in order to give credibility to the compensation programme established by the United Nations Security Council. The Panel urges that due priority be accorded as regards full payment of US$4,000 or US$8,000, pursuant to the terms of Decision 17 [S/AC.26/Dec.17 (1994)], to category "A" claimants who, in accordance with the Governing Council's directives, did not file claims in any other category.10/

Geneva, 10 July 1996

(Signed) Kamal Hossain
Chairman

(Signed) Matti Pellonpää
Commissioner

(Signed) Rafael Rivas-Posada
Commissioner

Notes

1/ The recommendations concerning the first instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1994/2, the "first report"). General information regarding the establishment of the United Nations Compensation Commission in the aftermath of the Gulf crisis as well as the composition of the Panel are contained in the introduction to the first report. The recommendations concerning the second instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/2, the "second report"). The recommendations concerning the third instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/3, the "third report"). The recommendations concerning the fourth instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' claims)" (S/AC.26/1995/4, the "fourth report"). The recommendations concerning the fifth instalment of claims are contained in the "Report and Recommendations made by the Panel of Commissioners Concerning the Fifth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/5, the "fifth report").

2/ For a more detailed description of the nature of category "A" claims, the Claim Form "A", and the amounts that can be claimed under this category, see section I of the first report.

3/ For a detailed description of the matching methodology see section IV.D. of the first report.

4/ For a detailed description of the sampling methodology see section IV.E. of the fourth report.

5/ The Panel notes that while the sixth report concludes the review of all the category "A" claims filed with the Commission it may be necessary to report subsequent corrections and amendments that may arise in the future, pursuant to article 41 of the Rules. The Panel also notes that the total number of category "A" claims reviewed by the Panel in instalments one through six is less than the total number of category "A" claims reported in the Executive Secretary's reports to the Governing Council pursuant to article 16 of the Rules. These differences are as a result of a combination of factors (e.g., consolidated claims withdrawn then resubmitted, in total or in part; claims that, for technical reasons, were not originally reflected in the database; and duplicate claims).

6/ This amount may still be changed to the lower individual amount of US$2,500, pursuant to the Governing Council's decision on "Multi-Category Claims" (S/AC.26/Dec.21 (1994), Decision 21), if the check across claims categories determines that a category "A" claimant filing for the higher individual or family amount has also filed a claim in categories "B", "C" or "D". This cross-category check will be carried out against category "C" and "D" claims as they are loaded into the computerized database (see para. 24, of this report).

7/ Since subsequent payments beyond the initial US$2,500 to be paid to successful claimants pursuant to the Governing Council's decision on "Priority of payment and payment mechanism" (S/AC.26/Dec.17 (1994), Decision 17) are not expected to be made before the loading of all of the category "C" and "D" claims into the Claims Database is completed, the implementation of these reductions in award amounts will not conflict with the Commission's projected payment schedule.

8/ If the amount claimed under category "A" is US$2,500 or US$4,000, the amount to be deducted from the total amount to be recommended for the category "C" claim is US$2,500. If the amount claimed under category "A" is US$5,000 or US$8,000, the amount to be deducted from the total amount to be recommended in the category "C" claim is US$5,000.

9/ E.g., inter alia, those procedures relating to the "dominant and effective nationality" criterion established by the Iran-United States Claims Tribunal in case No. A-18 (Iran-United States Claims Tribunal Reports, vol. 5, 1984, pp. 251-266); the "real and effective nationality" criterion developed by the International Court of Justice in the Nottebohm case (I.C.J. Reports, 1955, pp. 4-27); and the "effective nationality" criterion used in the Canevaro arbitration (R.I.A.A., vol. 11, 1961, pp. 397-410). All of these precedents rely on the evaluation of the particular circumstances, both legal and factual, of each individual claimant.

10/ See para. 15 of the third report in which the Panel noted that, at its sixteenth session, the Governing Council had "decided to keep under advisement, and at an appropriate time consider, whether the Commission's procedures for making payments to successful claimants should be implemented as proposed by the Commissioners, i.e. that all successful claimants who had submitted category "A" claims for higher amounts but had not submitted claims in any other category, receive full payment of those amounts, pursuant to the terms of Decision 17, before any additional amounts beyond the initial US$2,500 are paid to the category "A" claimants who submitted claims for such higher amounts but had also filed claims in other categories. In considering this matter, the Governing Council would take into account the views of the secretariat regarding this proposal's feasibility and implications".

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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FOURTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS)

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GE.96-64717

Introduction

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$100,000 (category "C" claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure 1/ (the "Rules"). These recommendations concern the fourth instalment comprising 71,703 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel has reviewed the fourth instalment of category "C" claims in a continuum with the Panel's processing of the first three instalments of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its annexes 2/ (the "First Report"), the Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its addendum 3/ (the "Second Report"), and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)4/ (the "Third Report"), which have been approved by the Governing Council.5/ The fourth instalment has been processed on the basis of the considerations, precedents and determinations expressed in the First, Second and Third Reports, which the present report incorporates by reference.

3. This report reflects the work performed by the Panel since it issued its recommendations on the third instalment of category "C" claims. The Panel met with the Commission's secretariat at the secretariat's headquarters in Geneva on 16-17 October 1996. The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the fourth instalment.

I. PROCESSING APPROACH AND SCOPE OF WORK

4. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and other relevant principles and practices of

international law. In addition to the information presented in the claims, as in the case of previous instalments, the Panel has also taken into account the following: information accompanying the submission of the fourth instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; and relevant United Nations and other reports.

5. In terms of defining the Panel's mandate, the Governing Council's decision 1 has particular relevance.6/ In this decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted."7/ Consistent with this decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts.

6. The First and Second Reports provide an extensive discussion of the considerations and preparations underlying the processing methodologies applied to the category "C" claims.8/ In view of the Panel's mandate, and in keeping with the "fast-track" processing approach applied to the second and third instalments of claims, wherein claims containing loss elements that may be processed through database-assisted techniques are resolved in their entirety, the application of statistical sampling and modelling techniques continues to form the basis for the fourth instalment of category "C" claims.9/ The Panel notes that, as explained in the Second and Third Reports, claims not meeting the "fast-track" processing criteria also require expedited processing and will be included in future instalments. However, given the large number of claims received in category "C", the Panel has determined that those claims that can be processed efficiently through database-assisted techniques will be addressed first.

II. CLAIMS INCLUDED IN THE FOURTH INSTALMENT

7. As noted in previous reports, the Governments of Kuwait and Egypt, who submitted the largest number of category "C" claims to the Commission,10/ were the only governments to submit claims in both paper and computer format.11/ The submission of claims in computer format has made the claims information for thousands of claimants from these two countries readily available on the Commission's database, thereby providing access to claims data that can thus be processed efficiently through the Panel's "fast-track" methodology. In view of the above, the fourth instalment includes 19,434 claims submitted by the Government of Egypt and 40,649 claims submitted by the Government of Kuwait.

8. In addition, the data entry of claims information by the secretariat for other submitting governments and international organizations as described in the Second Report 12/ is nearly complete, making additional claims available for processing by means of the Commission's "fast-track" methodology. Claims that have already been entered into the Commission's computer database,13/ and that present losses that lend themselves to processing by the Commission's "fast-track" methodology, have been included in the fourth instalment. The fourth instalment also includes corrections to some of the recommendations made in previous reports. These corrections were brought to the attention of the Executive Secretary by governments or international organizations pursuant to article 41(1) of the Rules.14/

9. The claims included in this instalment represent the losses most frequently suffered by category "C" claimants. They include losses claimed on the "C1" page for transportation, food, lodging, relocation and other related losses ("C1-Money" claims); losses claimed on the "C4" page for clothing, personal effects, household furnishings and other personal property-related losses ("C4-CPHO" claims);15/ losses claimed on the "C4" page for the loss or theft of motor vehicles ("C4-MV" claims);16/ losses claimed on the "C5" page related to bank accounts located in Kuwait;17/ and wages and salary losses claimed on the "C6" page of the claim form ("C6-Salary" claims).18/ Also included in this instalment are losses claimed by Kuwaitis on the "C1" page of the claim form for mental pain and anguish ("C1-MPA" claims)19/ related to forced hiding; C1-MPA claims submitted by nationals of Organization for Economic Cooperation and Development (OECD) countries related to forced hiding, hostage taking or illegal detention for more than three days;20/ and claims submitted by the Government of Egypt on

the "C6" page for mental pain and anguish related to the deprivation of all economic resources ("C6-MPA" claims).21/

10. During the processing of the fourth and previous instalments, the secretariat applied a special computer programme to perform cross-checks on the claims. The cross-check program performs a search on various combinations of available identifying information in order to exclude as much as possible any cross-category multiple recovery between category "A" (departure) claims and claims for departure submitted on the C1 page of the category "C" claim form. In the previous instalments, all detected matches were removed from the "fast-track" processing cycle. For the fourth instalment, however, in accordance with the Governing Council's decision on multi-category departure claims,22/ after confirming that claimants who filed individual or family claims in category "A" had also filed claims for departure losses in category "C", the secretariat has reduced the "C1-Money" departure claims accordingly.23/ This fourth instalment reports the adjusted recommended award amounts.

III. RECOMMENDATIONS

11. The Panel hereby presents the amounts recommended as compensation for 70,558 claims in the fourth instalment of category "C" claims. Totalling US$637,643,444.35, these recommended compensation amounts are listed in the summary table below for each Government and international organization included in the fourth instalment. Each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. The amounts recommended for compensation in the fourth instalment resolve these claims in their entirety. One thousand one hundred and forty-five claims in the fourth instalment of category "C" claims are not recommended for payment. The claims not recommended for payment relate exclusively to the following: C1-Money losses where recommended amounts are equal to or lower than the amounts previously approved by the Governing Council for the same claimants in category "A";24/ C5-Kuwait bank losses; and C6-MPA losses for Egypt.25/

Summary of Fourth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	2	-	23,763.09
Australia	8	-	122,481.32
Austria	2	-	28,397.02
Bahrain	1	-	20,328.64
Bangladesh	108	-	782,755.06
Bosnia & Herzegovina	1	-	43,231.56
Bulgaria	16	-	85,558.62
Canada	63	-	1,243,162.58
China	2	-	17,017.83
Croatia	4	-	23,009.59
Czech Republic	6	-	155,531.10
Denmark	9	-	219,836.74
Egypt	18,312	1,122	119,711,643.43
Ethiopia	22	-	64,316.37
Finland	1	-	9,300.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	1	-	19,771.44
France	35	-	492,132.20
Germany	34	-	566,928.16
Greece	6	-	150,205.89
Hungary	8	-	123,238.70
India	5,869	6	44,834,752.51
Ireland	41	-	502,371.34
Italy	15	-	397,973.21
Japan	79	-	851,168.11
Jordan	2,385	15	23,857,531.37
Kenya	1	-	11,639.22
Kuwait	40,649	-	409,227,615.37

Summary of Fourth Instalment Recommendations			
Lebanon	14	-	260,004.42
Mauritius	8	-	25,647.68
Morocco	3	-	37,083.44
Nepal	1	-	4,028.09
Netherlands	3	-	89,825.20
New Zealand	4	-	79,478.21
Nigeria	2	-	6,969.03
Pakistan	1,245	-	11,801,874.79
Philippines	219	2	712,314.51
Poland	27	-	243,154.44
Senegal	1	-	4,505.19
Slovakia	4	-	60,003.67
Somalia	1	-	4,117.65
Spain	3	-	77,922.94
Sri Lanka	1	-	15,743.94
Sudan	1	-	11,750.74
Sweden	6	-	153,091.31
Switzerland	1	-	7,384.86
Thailand	12	-	49,748.52
Tunisia	12	-	156,314.93
Turkey	152	-	1,257,021.33
United Kingdom	705	-	13,005,244.53
United States	428	-	5,542,379.86
Yemen	9	-	185,816.11
UNDP Jerusalem	3	-	94,379.67
UNDP Kuwait	1	-	6,394.46
UNDP Washington	1	-	15,138.41
UNDP Yemen	4	-	57,578.34
UNHCR Canada	4	-	62,414.01

Summary of Fourth Instalment Recommendations			
UNHCR Geneva	2	-	21,249.45
UNRWA Vienna	1	-	9,204.15
Total	70,558	1,145	637,643,444.35

12. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel, on the initiative of the Executive Secretary, recommends approval of corrected recommended amounts for seven claims from the first instalment. A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the countries affected. The concurrent recommended changes per country are listed below:

FIRST INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
United Kingdom	5,329,138	5,322,359
United States	10,423,601	10,514,246
Federal Republic of Yugoslavia (Serbia and Montenegro)	661,219	616,860

13. Following checks to exclude cross-category multiple recovery,26/ the secretariat has, in cases of confirmed matches of category "A" claims and "C1" departure claims, made the appropriate deduction from the compensation awarded to the category "C" claimants.27/ Forty-two (42) claims submitted by the Government of Egypt that were previously reported in the second instalment and approved by the Governing Council were subsequently determined to be confirmed cross-category "A" and "C1" matches. A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the Government of Egypt. The total recommended awards for the Government of Egypt have therefore been corrected as follows:

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Egypt	132,012,193.12	131,970,764.32

14. The Panel is satisfied that the secretariat has used reasonable and practical means to detect the existence of duplicate claims. However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by all Governments and international organizations receiving lists of individual claimants in order to prevent instances of overpayment to their claimants.28/

15. With reference to the considerations on the subject of interest expressed in the First Report,29/ the Panel recommends that interest be awarded on the claims included in this fourth instalment of category "C" claims as of 2 August 1990.30/

16. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 16 October 1996

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

NOTES

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ S/AC.26/1996/1 and S/AC.26/1996/1/Add.1/Rev.1.

4/ S/AC.26/1996/2.

5/ S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996) and S/AC.26/Dec.37 (1996).

6/ S/AC.26/1991/1.

7/ S/AC.26/1991/1, para. 8.

8/ See First Report, pp. 49-208 and Second Report, paras. 24-51.

9/ The "fast-track" processing approach is described in detail in the Second Report. See, in particular, paras. 8-14.

10/ Approximately 166,000 and 92,500 category "C" claims have been filed by the Governments of Kuwait and Egypt, respectively.

11/ Pursuant to article 7(2) of the Rules.

12/ See Second Report, para. 18.

13/ See Second Report, paras. 19-22.

14/ Article 41(1) of the Rules states that "[c]omputational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council."

15/ See the discussion in the Second Report on the statistical modelling methodologies used in resolving C1-Money and C4-CPHO claims, at paras. 33-39.

16/ See the discussion in the Second Report on the C4-MV methodology, at paras. 40-41.

17/ See the discussion of "C5" bank accounts located in Kuwait in the Second Report, at paras. 42-43.

18/ See the discussion of the C6-Salary methodology in the First Report at pp. 168-194 and the Panel's review and analysis in the Second Report, at paras. 44-51.

19/ See the discussion in the Second Report on the methodology used in resolving C1-MPA claims. Second Report, paras. 25-32.

20/ See discussion of C1-MPA claims in the First Report, particularly with respect to the categories of persons considered to have been forced to hide on account of a "manifestly well-founded fear" for their lives or of being taken hostage or illegally detained, pp. 92-96.

21/ See Second Report, note 44.

22/ S/AC.26/Dec.24 (1994). See also S/AC.26/Dec.21 (1994) and S/AC.26/Dec.17 (1994).

23/ Pursuant to Governing Council decision 24 (S/AC.26/Dec.24 (1994)), any claimant who has filed an individual claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated in category "C" only insofar as the amount of such losses is determined to exceed US$2,500. Any claimant who has filed a family claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated only insofar as the amount of such losses is determined to exceed US$5,000.

24/ As a result of the application of Governing Council decision 24 (S/AC.26/Dec.24 (1994)) to these claims, the amount calculated under category "C" has been entirely offset by the category "A" awards and, therefore, no amount of compensation is recommended for these category "C" claims.

25/ In connection with the rejection of these claims, the Panel notes in particular that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p. 194, Second Report, note 44, and Third Report, note 15.

26/ See discussion supra at para. 10.

27/ See S/AC.26/Dec.21 (1994) and S/AC.26/Dec.24 (1994).

28/ In the confidential reports that provide a breakdown of individual award amounts, governments and international organizations are requested to report to the Commission such instances that would result in overpayments to claimants.

29/ First Report, pp. 32-33.

30/ See also S/AC.26/1992/16.

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EXECUTIVE SUMMARY OF THE REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS APPOINTED TO REVIEW THE WELL BLOWOUT CONTROL CLAIM (THE "WBC CLAIM")

GE.96-64795

Introduction

1. On 30 July 1993, KUWAIT OIL COMPANY (K.S.C.) ("KOC" or the "Claimant") filed with the United Nations Compensation Commission (the "UNCC" or the "Commission") a claim referred to by the Claimant as the "Well Blowout Control Claim" (the "WBC Claim"). In this claim, which was submitted on a category "E" (corporate) claim form, the Claimant seeks compensation in the amount of US$951,630,871 for the costs allegedly incurred in:

a. the planning for the work anticipated on the return of the oil fields of Kuwait to KOC;

b. the work performed to extinguish the well-head fires that were burning upon the withdrawal of Iraqi forces from Kuwait;

c. the initial sealing of the wells to stop the flow of oil and gas; and

d. the making safe of the wellheads so that work on the reinstatement of production could be started.

2. The work described above is referred to by the Claimant as the "Well Blowout Control ('WBC') Exercise."

3. The Claimant's initial submission consists of five volumes of documents, including an accountants' report prepared by Touche Ross (the "Accountants"), and a videotape. This documentation is only a fraction of the documentation underlying the WBC Claim. The Claimant explains that, potentially, the whole of the documentation that could be submitted in support of the WBC Claim is vast and could not feasibly be dealt with other than on a computerized basis.

4. At its sixteenth session, on 22 March 1995, the Governing Council of the Commission (the "Governing Council") appointed a Panel of Commissioners composed of Mr. Allan Philip as Chairman and Messrs. Bola A. Ajibola and Antoine Antoun as Commissioners (the "Panel") to review the WBC Claim. The present document provides an executive summary of the report and recommendations to the Governing Council by the Panel so appointed, pursuant to article 38 (e) of the Provisional Rules for Claims Procedure (the "Rules") (S/AC.26/1992/10).1/ The full text of the Panel's report and recommendations is annexed hereto for further reasoning and explanation.

I. PROCEEDINGS

5. In view of the complexity of the issues raised, the volume of documentation underlying the Claim and the amount of compensation sought by the Claimant, the Panel in its first Procedural Order of 27 November 1995 classified the WBC Claim as an unusually large or complex claim within the meaning of article 38 (d) of the Rules. The Panel also invited the Claimant to respond to extensive interrogatories by the Panel, and requested the Government of the Republic of Iraq ("Iraq") to submit its response to the Statement of Claim and related documentation.

6. Further Procedural Orders were issued by the Panel on 14 May, 3 July and 2 August 1996, whereby the Panel requested supplemental submissions, documents and information from the Claimant and Iraq. Pursuant to a decision by the Panel, an on-site inspection was performed in Kuwait by a verification team from 12 through 17 July 1996. The purpose of the on-site inspection was to review the accounts, invoices and other documentation underlying the WBC Claim that had not been submitted to the Commission.

7. The Panel conducted oral proceedings from 29 July through 1 August 1996. Iraq attended the proceedings as "observers under protest" until 31 July 1996. On that date, the Panel issued a Procedural Ruling denying Iraq's request, submitted immediately prior to the oral proceedings, to postpone the oral proceedings and to grant Iraq additional time to prepare its legal defense in the WBC Claim. After the Panel's ruling, Iraq no longer availed itself of the opportunity of attending the oral proceedings.

8. Subsequent to the oral proceedings the Claimant amended the WBC Claim, which resulted in a reduction of the amount claimed by US$915,209. Accordingly, the WBC Claim as amended amounts to US$950,715,662.

II. FACTS AND CONTENTIONS

9. KOC is a wholly-owned subsidiary of Kuwait Petroleum Corporation ("KPC"). As the operating company of Kuwait's public oil sector, KOC is responsible for the maintenance and development of the oil fields and for all crude oil and gas production in Kuwait. KPC, the shares of which are wholly owned by the State of Kuwait, is responsible for the coordination of Kuwait's entire public sector oil and gas industry and is the holding company of all other companies operating in the oil and petrochemical sector.

10. According to the Claimant, after Iraq's invasion and occupation of Kuwait on 2 August 1990 a crisis team was established in London, the United Kingdom, consisting of members of the senior management of Kuwait's oil sector. The Claimant states that the team soon became aware that Iraqi forces were placing explosives around the oil installations in Kuwait and in particular around wellheads. A plan called "Al-Awda" was devised to cope with the anticipated destruction of the oil sector. The WBC Exercise was one of the priorities of this plan.

11. Negotiations were started with various firefighting and support services companies to contract for the services required. A contract was also entered into with the international engineering company Bechtel Limited ("Bechtel"). Under the contract Bechtel agreed to manage the entire Al-Awda project and provide a variety of other services.

12. The Claimant states that, upon the withdrawal of the Iraqi forces from Kuwait, out of a total of 914 operational wells in Kuwait, 798 wellheads had been detonated by the Iraqi forces, of which 603 were on fire, 45 were gushing oil but not on fire, and 150 although damaged were neither on fire nor gushing oil. Because the number of wells detonated was higher than anticipated, the firefighting effort was expanded to include some 27 firefighting teams from the United States, Canada, Iran, Romania, Hungary, the Soviet Union, France, the United Kingdom, China and Kuwait.

13. The last well-head fire was extinguished on 6 November 1991, eight months after the liberation of Kuwait. Thereafter, the Al-Awda project was redesignated the "Al-Tameer" (the "Rebuilding") project, which continued the work of Al-Awda and took it beyond the WBC stage into the rebuilding and reconstruction stage. The bulk of the costs incurred in the reconstruction effort are covered by other claims filed by KOC, including the Physical Assets and Related Damage Claim (the "Physical Assets Claim").

14. Iraq denies any responsibility for the oil-well fires, asserting that the fires were caused by allied bombing. According to Iraq, the alleged allied bombing broke the chain of causation between Iraq's invasion and the oil fires, thus rendering the resulting losses indirect. In this connection, Iraq also challenges the probative value of the documentation provided by the Claimant as well as the credibility of the Claimant's witnesses. On the merits, Iraq objects to the Claim on a number of financial and technical grounds.

III. PRELIMINARY ISSUES

15. The issue arose in the course of the proceedings as to whether the WBC Claim can properly be categorized as a category "E" (corporate) claim. This issue and the related issue of the Claimant's standing to pursue the WBC Claim are considered by the Panel as preliminary issues.

16. With regard to the proper categorization of the WBC Claim, the Panel finds that the categorization of a claim as a category "E" or "F" claim does not entail any substantive consequences in terms of the law to be applied. Consequently, the fact that the WBC Claim has been submitted on a category "E" (corporate) claim form does not preclude the applicability of the criteria listed under section III of Governing Council decision 7, entitled "Criteria for processing claims of governments and international organizations" (S/AC.26/1991/7/Rev.1). These criteria specifically provide for the compensability of "expenses directly relating to fighting oil fires."

17. The Claimant acknowledged in the course of the proceedings that the WBC Exercise was funded by the Ministry of Oil, raising the issue as to whether KOC is the proper party to assert the Claim. The Panel finds that this issue is to be resolved in light of the structure of Kuwait's public oil sector as a whole, taking into account the respective roles of the companies operating therein and the additional information provided by the Claimant in the course of the proceedings. The Panel concludes that the WBC Claim must be deemed to have been made by KOC on behalf of Kuwait's public oil sector as a whole and that, consequently, both the Government of Kuwait and KPC will be bound by the decision to be rendered by the UNCC in this matter and thus will be estopped from bringing the same claim before the UNCC.

IV. LEGAL FRAMEWORK

18. The law to be applied by the Commission is set out in article 31 of the Rules. According to article 31, such law includes Security Council resolution 687 (1991), in which the Security Council determined, acting under Chapter VII of the United Nations Charter, that Iraq is "liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

19. The decisions of the Governing Council further define the scope of Iraq's liability. Section III of Governing Council decision 7 specifically provides for the compensability of "expenses directly relating to fighting oil fires." As noted above, the fact that section III deals with claims by governments and international organizations does not, in the Panel's view, mean that the criteria contained therein cannot be applied to category "E" claims. Furthermore, under paragraph 21 of Governing Council decision 7, a compensable loss "include[s] any loss suffered as a result of . . . [m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991." (Emphasis added.)

20. Based on the evidence and testimony presented, the Panel finds that, although part of the damage for which compensation is being sought in the WBC Claim may be a result of the allied bombing, the bulk of the oil-well fires were directly caused by the explosives placed on the wellheads and detonated by Iraqi armed forces. The evidence referred to by Iraq is consistent with this conclusion. In any event, under paragraph 21 of Governing Council decision 7, Iraq's liability includes any loss suffered as a result of military operations by either side. Iraq's contention that the allied air raids broke the chain of causation therefore cannot be upheld.

21. Having reached the above conclusions, the Panel's task in the present proceedings is twofold. First, the Panel must determine whether all the costs for which compensation is being sought in the WBC Claim can be considered to be the direct result of Iraq's invasion and occupation of Kuwait. Second, the Panel must verify, using expert advice where necessary, that such costs have in fact been incurred by the Claimant in the execution of the WBC Exercise.

V. SUBSTANTIVE ANALYSIS

22. The WBC Claim as amended by the Claimant can be analyzed as follows:

KOC costs	Amount (US$)
International firefighting and support services contractors	206,879,412
Post capping	25,654,763
Sundries	10,068,708
Total	242,602,883

KOC - Al-Awda costs	Amount (US$)
Direct costs	
Firefighter support	52,392,745
Construction equipment	293,462,100
Ancillary costs	
Project management and related services	145,839,509
Support facilities	120,958,852
Freight	65,791,081
Communications	26,422,306
Jebel Ali staging area	3,246,186
Total	708,112,779

23. KOC costs are defined by the Accountants as "costs incurred by KOC and recorded on the accounting system maintained by KOC Financial Services Department." KOC - Al-Awda costs are defined as "costs associated with the Al-Awda project that were recorded by Bechtel as project managers, on the KOC - Al-Awda system. These are all paid by KOC but the difference between these and other KOC costs is that these are recorded within the Al-Awda project and details transferred to the KOC ledgers."

24. The Claimant states that, generally, the WBC Claim includes all costs "incurred in connection with the preparation for, and the execution of, the WBC Exercise provided that they were paid by 31 July 1992, except in the case of post-capping costs, which have been included, irrespective of the time of payment, provided that they were recorded by KOC's accounting department by 30 September 1992."

25. The costs incurred in the WBC Exercise include revenue expenditure as well as capital expenditure. The total amount sought by the Claimant, US$950,715,662, consists of revenue expenditure in the amount of US$646,809,000 and of capital expenditure in the amount of US$303,907,000. The latter figure represents the full cost of capital items purchased in the period covered by the WBC Claim. The Claimant states that these items continued to be used in the reconstruction project and that their residual value would be calculated at a later stage and reflected in KOC's Physical Assets Claim. Accordingly, no allowance was made by the Claimant to reflect any residual value of these items as at the end of the WBC Exercise.

26. Although the Panel finds that a certain amount of capital expenditure is appropriately included in the WBC Claim, this does not necessarily mean that all of the capital expenditure can properly be verified and, consequently, is fully compensable in the context of this Claim. While the Claim file contains information that enables the Panel to verify the purpose for which the capital assets in question were used during the period covered by the Claim, the Panel is not in a position to verify for which purpose these assets were used after that period. The documentation that would enable the Panel to perform such verification is presented in KOC's Physical Assets Claim and thus is not before this Panel, which was appointed to review the WBC Claim only.

27. The Panel concludes that, based on the entire time period during which the capital assets in question were used, 22 per cent of the total value of such assets, amounting to US$66,859,457, can be verified in the present Claim. The remaining portion, US$237,047,168, is to be allocated to KOC's Physical Assets Claim as these costs cannot properly be verified in the present Claim.

28. The Claimant explains that with regard to the ancillary (or common) costs, "it was impossible to know precisely what costs were attributable to the WBC exercise, as distinct from reinstatement of KOC's operating facilities." Consequently, instead of attempting to allocate the common costs between the WBC Claim and other claims, the Claimant included in the WBC Claim, with minor exceptions, the KOC - Al-Awda costs that were committed to before 30 November 1991 and that were paid for by 31 July 1992.

29. The Panel agrees that the KOC - Al-Awda costs recorded under the headings "Firefighter support" and "Construction equipment" are properly classified as "direct" costs, or costs attributable almost exclusively to the firefighting effort. With regard to the ancillary (or common) KOC - Al-Awda costs, the Panel is not in a position to determine whether the costs incurred in projects undertaken by the Claimant concurrently with the WBC Exercise are compensable and, if so, to what extent. In these circumstances the Panel determines that 80 per cent of the common KOC - Al-Awda costs are to be verified in the WBC Claim. It follows that the remaining 20 per cent is to be allocated to KOC's other claims as these costs cannot properly be verified in the present Claim. Certain KOC costs are also to be considered as common costs and allocated accordingly.

30. To the extent that the costs claimed in the WBC Claim can be verified in the present proceedings, the Panel is satisfied, based on the evidence

before it and the verification procedures employed, that these costs have in fact been incurred by the Claimant. The Panel also notes that appropriate procedures, such as competitive tendering, the requirement of KOC approval for purchases made through Bechtel, and accounting and cost control systems were employed by the Claimant to control the costs and to keep them at a reasonable level in the extraordinary circumstances prevailing in Kuwait in the aftermath of the Gulf War.

VI. QUANTIFICATION OF THE CLAIM

A. KOC costs

31. The total amount claimed under this heading, US$242,602,883, contains capital expenditure in the amount of US$25,991,055. Applying the standard described in paragraph 27, supra, relating to the allocation of capital expenditure, the Panel concludes that 78 per cent of this figure, amounting to US$20,273,023, is to be allocated to KOC's Physical Assets Claim as it represents costs that cannot properly be verified in the present Claim.

32. Certain cost items claimed under the heading "Sundries" are to be treated as costs common to the various activities undertaken by the Claimant contemporaneously with the WBC Exercise. Consequently, 20 per cent of these costs, amounting to US$783,592, must be allocated to KOC's other claims as they cannot properly be verified in the present Claim.

33. The claim for the costs incurred in connection with the work performed by KOC's own firefighting team is rejected. In the absence of any further details by the Claimant regarding the precise nature of these payments, it appears to the Panel that the Claimant would have had to make such salary payments even if there had been no invasion.

34. The Panel concludes that costs claimed under the heading "KOC costs" in the total amount of US$218,741,878 have been incurred in the execution of the WBC Exercise and are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

B. KOC - Al-Awda costs

35. The total amount claimed under the present heading, US$708,112,779, includes capital expenditure in the amount of US$277,915,570. Applying the standard relating to the allocation of capital expenditure, the Panel determines that 78 per cent of this amount, or US$216,774,145, is to be

allocated to KOC's Physical Assets Claim as it represents costs that cannot properly be verified in the present Claim. In view of their nature, the costs claimed under the heading "Freight" are to be treated like capital expenditure.

36. Applying the standard applicable to common costs, the Panel determines that 20 per cent of such costs are to be allocated to KOC's other claims as costs that cannot properly be verified in the present Claim. This allocation, which affects amounts claimed under the headings "Project management and related services," "Support facilities," "Communications" and "Jebel Ali staging area," totals US$47,470,487.

37. The Panel notes that under the heading "Support facilities" the Claimant seeks compensation for costs incurred in removing unexploded ordnance during the period covered by the WBC Claim. Because the Claimant has filed a separate claim with the UNCC for the remainder of such costs, any determination by the Panel in the present Claim would necessarily prejudge the other claim. In view thereof, the Panel determines that these costs are to be allocated to the appropriate claim as they cannot properly be verified in the present Claim.

38. The Panel concludes that the costs claimed under the heading "KOC - Al-Awda costs" in the total amount of US$391,556,669 have been incurred in the execution of the WBC Exercise and are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

C. Wafra

39. The Panel notes that the reduction made by the Claimant in respect of costs incurred in fighting fires in the Wafra oil field consists solely of direct firefighting costs and does not include costs incurred in supporting the firefighting effort in the area. See paragraph 8, supra.

40. In the Panel's view, the compensability of indirect costs is necessarily linked to the compensability of the direct costs to which they relate. Consequently, under the legal arrangements applicable to the Wafra oil field, the Panel determines that the indirect costs allocable to Wafra, in the estimated amount of US$250,000, are not compensable.

D. Summary

41. The Panel determines that the loss, damage or injury for which compensation is being sought in the WBC Claim is compensable in this Claim in the amount of US$610,048,547. The Panel's findings are summarized in the table below.

Analysis	KOC costs (US$)	KOC - Al-Awda costs (US$)	Global determinations (US$)	Amount (US$)
Amount claimed	243,519,092	708,112,779	-	951,630,871
Amendment	(915,209)	-	-	(915,209)
Rejections				
KOC firefighting team	(2,804,390)	-	-	(2,804,390)
Wafra indirect costs	-	-	(250,000)	(250,000)
Allocations				
Capital expenditure	(20,273,023)	(216,774,145)	-	(237,047,168)
Common costs	(783,592)	(47,470,487)	-	(48,254,079)
Freight	-	(51,317,043)	-	(51,317,043)
Ordnance clearance	-	(994,435)	-	(994,435)
Total	218,741,878	391,556,669	(250,000)	610,048,547

VII. INCIDENTAL ISSUES

42. The bulk of the costs claimed in the WBC Claim were incurred in United States dollars. Thus, these costs do not raise any currency exchange rate issues. With regard to the exchange rates used by the Claimant to convert costs incurred in Kuwaiti dinars, or in currencies other than Kuwaiti dinars, the Panel finds that those rates constitute reasonable approximations of the applicable market rates prevailing at the relevant times.

43. Under Governing Council decision 16, "Awards of interest" (S/AC.26/1992/16), "[i]nterest will be awarded from the date the loss occurred until the date of payment." The Panel finds that the "date" the loss occurred coincides with the period during which the relevant payments were made. Given that the costs forming the subject matter of the WBC Claim were incurred more intensively towards the end of the relevant

period, the Panel determines that 15 October 1991 be considered as the date the loss occurred for purposes of interest calculation.

44. The Panel notes that the Claimant does not seek claim preparation costs at the present time. Thus, the Panel finds no reason to pronounce itself on the issue.

VIII. RECOMMENDATIONS

45. In view of the foregoing, the Panel makes the following recommendations:

a. The Claimant KUWAIT OIL COMPANY (the "Claimant"), on behalf of Kuwait's public oil sector as a whole, is to be paid the amount of US$610,048,547 as compensation for the costs incurred in the execution of the Well Blowout Control Exercise as a direct result of Iraq's invasion and occupation of Kuwait;

b. The Claimant, on behalf of Kuwait's public oil sector as a whole, is to be paid interest on the principal amount specified in paragraph 45 (a), supra, as of 15 October 1991, pursuant to Governing Council decision 16;

c. The claim for the costs incurred in connection with the work performed by the Claimant's own firefighting team, in the amount of US$2,814,390, is rejected;

d. The claim for the indirect costs incurred in fighting oil-well fires in the Wafra oil field, in the amount of US$250,000, is rejected;

e. The Claimant may amend its Physical Assets and Related Damage Claim, filed with the UNCC on 27 June 1994, to include 78 per cent of capital expenditure claimed in the present Claim, in the amount of US$237,047,168, which amount cannot properly be verified in the present Claim;

f. The Claimant may amend its Physical Assets and Related Damage Claim, referred to in paragraph 45 (e), supra, to include 78 per cent of KOC - Al-Awda costs claimed under the heading "Freight," in the amount of US$51,317,043, which amount cannot properly be verified in the present Claim;

g. The Claimant may amend its other claims, identifying such claims and the amount to be allocated to each such claim, to include 20 per cent of common KOC costs claimed under the headings "Sundries/Legal costs" and "Sundries/Consulting costs" and common KOC - Al-Awda costs claimed under the headings "Project management and related services," "Support facilities," "Communications" and "Jebel Ali staging area," in the total amount of US$48,254,079, which amount cannot properly be verified in the present Claim; and

h. The Claimant may amend its Removal of Unexploded Ordnance Claim, filed with the UNCC on 30 July 1993, to include the KOC - Al-Awda costs relating to the removal of unexploded ordnance claimed under the heading "Support facilities," in the amount of US$994,435, which amount cannot properly be verified in the present Claim.

Geneva, 15 November 1996

(Signed) Mr. Allan Philip
Chairman

(Signed) Mr. Bola A. Ajibola
Commissioner

(Signed) Mr. Antoine Antoun
Commissioner

Note

1/ This executive summary has been prepared to address the concerns expressed by the Governing Council at its eighteenth session on 11 October 1995 regarding the costs of translation of the texts of the Commissioner Panels' reports and recommendations into the official United Nations languages.